Supreme Court, U.S.
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In the United States Supreme Court

Jared W. King, *Plaintiff-Appellant (Petitioner)*

v.

State of Connecticut Appellate Court (Official Capacity),
Defendant-Appellee

Court of Appeals Case No. 05-1296-cv

A Petition from the United States Court of Appeals for the Second Circuit

Petition for a Writ of Certiorari

I. Questions for Review

1. Should future parties and federal courts be allowed to use the *Rooker-Feldman* doctrine as a subject-matter jurisdictional bar to cases whose constitutional claims have never been heard, especially since the passage of the Judiciary Act of 1988 that allows the U.S. Supreme Court to hear cases by certification only instead of by plaintiff demand, and thereby avoid jury review of a plaintiff's claims, a citizen's right guaranteed by the U.S. Constitution's Seventh Amendment?

2. Should 42 U.S.C. §1983 be interpreted to prevent all claims against the *ultra vires* or unconstitutional acts of state officials?

3. Should the principle of judicial immunity be expanded to include protection from suit for failure to perform ministerial acts which heretofore were subject to compulsion by writs of *mandamus*?

4. Should a court of law have the authority to ignore claims presented to it for adjudication?

5. Did the panel of the Court of Appeals, Second Circuit, err in failing to recognize that *Exxon Mobil Corp. v. Saudi Basic Industries*, 125 S.Ct 1517, L.Ed.2d 454 (2005) is an intervening U.S. Supreme Court case that overturned the Second Circuit Court of Appeals' "inextricably linked" standard set forth in *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195 (C.A.2 1996), the primary case cited by the district court judge's decision dismissing the three constitutional claims of my case?

6. Did the panel of the Court of Appeals, Second Circuit, err in overlooking that the facts of the case fail to meet even the Second Circuit Court of Appeals' new *Rooker-Feldman* standard following the U.S. Supreme Court decision in *Exxon Mobil, supra*, articulated in *Hoblock v. The Albany County Board of Elections* (2005 U.S. App. LEXIS 19071)?

7. Did the panel of the Court of Appeals, Second Circuit err in overlooking that the law and facts of the case do not support its conjecture that the named defendant in the case, The State of Connecticut Court of Appeals (Official Capacity), is a state agency, instead of the panel of judges as the plaintiff has maintained throughout the proceedings?

8. Did the panel of the Court of Appeals, Second Circuit err in that, even if, *en arguendo*, the plaintiff's claims were against a state agency, the Eleventh Amendment does not necessarily afford protection to state agencies from either suit or damages?

9. Did the panel of the Court of Appeals, Second Circuit err in concluding that the Eleventh Amendment affords protection from suit for the *ultra vires* or unconstitutional acts of its state officials?

10. Did the panel of the Court of Appeals, Second Circuit err in concluding that the majority opinion in the 5-4 U.S. Supreme Court decision cited by it to support its contention that state officials may not be sued under 42 U.S.C. §1983, *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989), let alone the minority dissent, specifically determined that state officials sued for injunctive relief may be sued under 42 U.S.C. §1983?

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Hoblock v. The Albany County Board of Elections, (2005 U.S. App. LEXIS 19071)

In re Charter Oak Assocs., 361 F.3d 760, 765 (2d Cir. 2004)

Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989)

Harris v. Chapman, 51 F.3d 901 (C.A.10 1995)

Howlett v. Rose, 496 U.S. 356, 110 L.Ed.2d, 110 S.Ct. 2430 (1990)

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IV. Citations of the Opinions and Orders Entered

Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000) (quoting *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996))

Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)

Branham v. Meachaum, 77 F.3d 626, 628 (2d Cir. 1996) (quoting *Gant v. Wallingford Bd. Of Educ.*, 69 F.3d 6691 673 (2d Cir. 1995))

Scheur v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds

Davis v. Scherer, 468 U.S. 183 (1984)

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Ashton v. Cafero, 920 F. Supp. 35, 37 (D.Conn. 1996)

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Metropolitan Entertainment Co., 25 F.Supp.2d at 368 (D.Conn. 1998)

Dodge v. Susquehanna Univ., 796 F.Supp. 829, 830 (M.D.Pa. 1992)

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V. Basis for Jurisdiction of the U.S. Supreme Court

Date Judgment or Order Sought to be reviewed was entered: December 19, 2005.

Date Order Respecting Rehearing was entered: May 2, 2006.

28 U.S.C. §1257 is the statutory provision that confers jurisdiction to this court to review on a *writ of certiorari* an order of the Court of Appeals, Second Circuit.

VI. Constitutional Provisions and Statutes Involved

U.S. Constitution, Amendment XIV, Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

U.S. Constitution, Amendment XI: The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of another State, or by Citizens or Subjects of any Foreign State.

28 U.S.C. §1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1332(a)(1): The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-

(1) citizens of different states;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For purposes of this section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

42 U.S.C. §1983: Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Judiciary Act of 1988, Section 3: Section 1257 of title 28, United States Code, is amended to read as follows: "§1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

(b) For purposes of this section, the term, 'highest court of a State' includes the District of Columbia Court of Appeals."

Legislative History House Report No. 100-660, Section B, first two paragraphs (before passage of Judiciary Act of 1988): However, several significant categories of cases remain subject to mandatory appellate review. This bill serves to convert these types of cases to review by certiorari. The four major categories of cases are set forth below: 28 U.S.C. 1257(1)-(2) and 28 U.S.C. 1258(1)-(2). –Subsection (1) of section 1257, United States Code, mandates review by the Supreme Court of a decision of the highest State court in which a decision could be had where the validity of a Federal law is drawn into question and the decision is against its validity. Subsection (2) similarly provides for review of State court decisions where the validity of a "statute of any state" is drawn in question on Federal grounds and the decision is in favor of its validity.

VII. Concise Statement of Facts of the Case

Petitioner filed complaint against the State of Connecticut Appellate Court (Official Capacity) claiming that the appellate court judges refusal to order the provision of a transcript acknowledgment after provision for payment or taking other remedial action and subsequent dismissal of action for failure to provide such transcript acknowledgment violated the petitioner's Fourteenth, Eighth and Sixth Amendment rights and violated 28 U.S.C. §1983 [*sic*] (42 U.S.C. §1983). The basis for federal jurisdiction of the federal complaint was 28 U.S.C. §1331, 28 U.S.C. §1332 and 42 U.S.C. §1983. The defendant moved to dismiss based on the grounds that a suit against a panel of state judges in their official capacity should be construed as a suit against the State of Connecticut, and therefore, should be dismissed because of the Eleventh Amendment and principle of

Sovereign Immunity and because 42 U.S.C. §1983 and 28 U.S.C. §1332 do not apply to states or state agencies; that the *Rooker-Feldman* doctrine applies; and that absolute judicial immunity applies to any claim for damages. The petitioner opposed the motion, and the defendant replied. The district court, Judge Janet C. Hall, dismissed the petitioner's claims in their entirety on the grounds that the *Rooker-Feldman* doctrine bars the petitioner's constitutional claims and the petitioner's failure to plead either the violation of a declaratory decree or declaratory relief and the principle of absolute judicial immunity bar the petitioner's 42 U.S.C. §1983 claim.

Petitioner moved the district court for reconsideration on the grounds that the district court overlooked: 1) the importance of the petitioner, the state criminal defendant, of both being and having been judicially determined to be indigent at the time of his request and of having followed the proper procedure to request additional transcript from the court reporter; 2) that the parties in the federal and state cases are different; 3) the lack of opportunity of the petitioner to litigate the claims in the state courts; 4) the claims are not the precise claims raised in the state court proceeding; 5) the Judiciary Act of 1988 requires certification of all cases to the U.S. Supreme Court; 6) the petitioner did not have access to declaratory relief; and 7) the principle of judicial immunity is not absolute. The defendant objected to aforementioned motion, and the petitioner replied. The district court, Judge Janet C. Hall, described her decision as the granting of the motion for reconsideration but the abiding to the court's original decision. In this decision, the court claimed the first fact was irrelevant to determining the question of federal jurisdiction and that the facts enumerated as "2," "3," and "4" are also irrelevant, citing the "inextricably linked" phrase from *Feldman*, *supra*, and the application of that phrase by the Court of Appeals, Second Circuit in *Moccio v. N.Y. State Office of Court Admin*, *supra*. The court concluded that the

District Court of Connecticut and the Court of Appeals Second Circuit are still applying *Rooker-Feldman* in spite of the passage of the Judiciary Act of 1988 and its subsequent elimination to U.S. citizens of their guarantee to a federal forum for review of unconstitutional state court action. The court was silent regarding why the court should deny the petitioner's 42 U.S.C. §1983 claim when the petitioner did not have access to declaratory relief. The court claimed it did not overlook the contours of the principle of judicial immunity, but was cognizant that judicial immunity is limited and applied the limited principle in her original ruling.

The petitioner appealed the district court decision on the same grounds as his motion for reconsideration, providing more of an explanation as to the district court's error in his brief. The defendant opposed, but acknowledged that the U.S. Supreme Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, *supra*, reversed unanimously the reasoning of the expanded *Rooker-Feldman* doctrine as applied by the Circuit Court of Appeals, Second Circuit in *Moccio*, *supra*, in the United States Supreme Court's first case addressing the *Rooker-Feldman* doctrine since *Moccio*, *supra*. The petitioner replied. The judicial panel of the Court of Appeals, Second Circuit issued a summary order in which it upheld the district court's decision for the same reasons as stated in the lower court's decision, without addressing the petitioner's specific claims of error nor providing alternative reasoning to support the lower court use of the *Rooker-Feldman* doctrine as expanded by *Moccio*, *supra*. The petitioner petitioned the Court of Appeals, Second Circuit for rehearing by the judicial panel and for rehearing *en banc*. The Court of Appeals, Second Circuit denied both of these petitions.

VIII. Argument for Allowance of Writ

The petitioner raised seven issues for the Second Circuit Court of Appeals' determination. The appellate court panel overlooked all of them; misapprehended their importance in the application of the *Rooker-Feldman* doctrine, 42 U.S.C. §1983 and the principle of judicial immunity; and failed to determine any of them. The petitioner respectfully asked that the court panel or the Court of Appeals, Second Circuit *en banc* determine them, preferably in the way as proffered in the corrected version (corrected in form not in content) of the petitioner's *Motion for Reconsideration of Decision Granting Motion to Dismiss*[1] and its accompanying memorandum, petitioner's *Plaintiff's Reply to Defendant's Objection to Motion for Reconsideration*,[2] and the petitioner's appellant brief. As written, the court's panel's summary order is unresponsive and, in so far as it mysteriously provides no rationale as to why the facts, statutes and case law avouched by the petitioner did not apply to this case, capricious. In the immortal words of the British statesman Edmund Burke: "A good parson once said, that where mystery begins, religion ends. Cannot I say, as truly at least, of human laws," (*a fortiori*, the judicial application of judicial doctrines), "that where mystery begins, justice ends." In her decision dismissing the case, *Ruling re: Motion to Dismiss [Dkt. No. 14]*,[3] District Court Judge Janet C. Hall couched her argument that the *Rooker-Feldman* doctrine applied to the instant case using the language of *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), "King asserts various claims under the federal constitution all of which arise out of, and are inextricably intertwined with, a decision by the Connecticut Appellate Court. All such claims are barred by the *Rooker-Feldman* doctrine," p. 5. The U.S. Circuit Court of Appeals for the Second Circuit in *Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d 195 (C.A.2 1996)

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[1] Number "35" on the docket sheet.
[2] Number "45" on the docket sheet.
[3] Number "32" on the docket sheet.

interpreted this language from *Feldman* as an expansion of the doctrine from its original scope in *Rooker v. Fidelity-Trust Co.*, 263 U.S. 413 (1923), an interpretation of Article III, Section 2 of the U.S. Constitution that prohibits federal district courts from providing appellate review of state court judgments, to one providing a subject matter jurisdictional bar to ordinary preclusion and comity doctrines, which are decidedly not jurisdictional in nature. As I have stated repeatedly and consistently throughout my submitted legal papers at the district and circuit court, I believe this interpretation to be erroneous and problematic.

Since Judge Hall's ruling, the U.S. Supreme Court has finally decided a case after its decision in *Feldman*, *supra*, using the *Rooker-Feldman* doctrine, *Exxon Mobil Corp. v. Saudi Basic Industries*, 125 S.Ct 1517, L.Ed.2d 454 (2005). Although the Second Circuit Court of Appeals panel cited the case in its summary order without explaining its significance, the U.S. Supreme Court declared the U.S. Court of Appeals for the Second Circuit's expansion of the original *Rooker* doctrine to be erroneous. Justice Ginsburg writes for the unanimous court,

> Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law under 28 U.S.C. §1738. See, e.g. *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (C.A.2 1996).

Chief Judge Walker of the U.S. Court of Appeals for the Second Circuit clearly understands the point I have been trying to make throughout these proceedings, albeit

heretofore unsuccessfully, that "*Exxon Mobil* teaches that *Rooker-Feldman* and preclusion are entirely separate doctrines," *Hoblock v. The Albany County Board of Elections*, (2005 U.S. App. LEXIS 19071), p. 6. The Second Circuit Court of Appeals panel appears to have misapprehended this distinction and overlooked the reasoning of the U.S. Supreme Court in *Exxon Mobil*, *supra*, and the U.S. Court of Appeals for the Second Circuit in *Hoblock, supra*. Issues Two through Four from the petitioner's appellant brief's statement of issues to have been determined by the Second Circuit Court of Appeals panel addressed the necessary conditions to apply state claim and issue preclusion principles.

Chief Judge Walker in *Hoblock v. The Albany County Board of Elections, supra*, set forth a new standard to evaluate the applicability of the *Rooker-Feldman* doctrine in the form of four, necessary conditions. Assistant Attorney General Osborne addressed this new standard in her appellee brief, and I addressed it in my appellate reply brief, pp. 7- 10. As explained in my reply brief, although the condition requiring that the federal suit follow the state judgment is certainly met by the facts of the case, the other three conditions are not. Since these are four, necessary conditions, all conditions must be met to apply the *Rooker-Feldman* doctrine using this standard. The Second Circuit Court of Appeals panel overlooked applying this *Hoblock* standard in its summary order, and Judge Hall certainly did not apply it in her decision in the case because the *Hoblock* decision did not exist at the time of her decision.

The Second Circuit Court of Appeals panel remarked in its summary order, "Although the state did not raise the issue, and we may therefore ignore it, [citation omitted], we note that King's claims against the state would appear to be a suit against a state agency, which is barred by the Eleventh Amendment." The Second Circuit Court of Appeals panel misapprehended that Assistant Attorney General Schaefer

raised the issue on pp. 5 –7 of his memorandum to his motion to dismiss,[4] I responded to this issue on pp. 10-13 and pp. 18-21 of my memorandum in opposition,[5] he replied to this issue on pp. 2-3 of his reply,[6] and the district court addressed the point on p. 4 of her ruling in the case,[7] claiming, "However, the court need not decide the question since the action is barred, in the first instance, by the *Rooker-Feldman* doctrine, *etc*." The Second Circuit Court of Appeals panel misapprehended that the defendant listed on the original complaint filed with the district court,[8] "State of Connecticut Appellate Court," and the defendant listed on the amended complaint served on the defendant,[9] "State of Connecticut Appellate Court (Official Capacity)," are not the same literally or substantially to "State of Connecticut." The court panel overlooked that although Mr. Schaefer may assume any convenient conjecture he wishes – I suspect he made the conjecture to assist his Eleventh Amendment claim which collapses without it – without proffering any evidence to support his conjecture, only the petitioner is in a position to know the meaning he intended by these phrases. The Second Circuit Court of Appeals panel overlooked that one of the procedural requirements for filing a claim under 42 U.S.C. §1983 is that the individuals sued must be identified as being sued in their individual, official or both individual and official capacities. Lastly, the court panel misapprehended that in considering a motion to dismiss, a court must accept the plaintiff's factual allegations as true and must draw all inferences from those facts in the plaintiff's favor, something the court notably did not do in the sentence quoted at the beginning of this paragraph from its summary order. As Judge Hall correctly wrote on p. 4 of *Ruling re: Motion to*

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[4] Number "15" on the docket sheet.
[5] Number "26" on the docket sheet.
[6] Number "27" on the docket sheet.
[7] Number "32" on the docket sheet.
[8] Number "1" on the docket sheet.
[9] Number "4" on the docket sheet.

Dismiss [Dkt. No. 14], "In considering such a motion, the court must accept the factual allegations alleged in the complaint as true and all inferences must be drawn in the plaintiff's favor, [citation omitted]." As Assistant Attorney General Osborne admitted on pp. 4-5 of her appellee brief,

> In ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader, [citation omitted]. A case should be dismissed if the court is satisfied that the complaint does not, and cannot, state any set of facts that would entitle the plaintiff to relief.

The Second Circuit Court of Appeals panel misapprehended that the Eleventh Amendment does not necessarily afford protection to state agencies from either suit or damages. Please see p. 2 and pp. 18-21 of *Memorandum in Opposition to Defendant's Motion to Dismiss the Complaint.*[10] Also, see Chief Judge Walker's decision in *In re Charter Oak Assocs.*, 361 F.3d 760 (C.A.2 2004) at 764 *et. seq.*, a case cited by this court in its summary order, for additional examples of the limitations to the Eleventh Amendment.

The Second Circuit Court of Appeals panel misapprehended that the Eleventh Amendment does not afford protection from suit for the *ultra vires* or unconstitutional acts of its state officials. Please see pp. 1-10 and pp. 18-21 of *Memorandum in Opposition to Defendant's Motion to Dismiss the Complaint.*[11]

The Second Circuit Court of Appeals panel cites the 5-4 U.S. Supreme Court decision, *Will v. Michigan Dept. of State*

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[10] Number "26" on the docket sheet.
[11] Ibid.

Police, 491 U.S. 58, 71 (1989), to support its assertion that the Eleventh Amendment bars a suit against a state agency. Assistant Attorney General Schaefer cited this case in his motion to dismiss, and I responded to the citation of this case on pp. 10-13 of *Memorandum in Opposition to Defendant's Motion to Dismiss the Complaint.*[12] The relevant quotation from p. 71 of *Will*, *supra*, is: "Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office, [citation omitted]. As such, it is no different from a suit against the State itself." The Second Circuit Court of Appeals, however, overlooked footnote "10," the sole footnote on p. 71. It reads in relevant part, "Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under §1983 because 'official-capacity actions for prospective relief are not treated as actions against the State,'[citations omitted]." This reasoning was followed in the Tenth Circuit case, *Harris v. Chapman*, 51 F.3d 901 (C.A.10 1995), a case cited by Assistant Attorney General Schafer in his motion to dismiss the complaint, addressed on p. 12 of my memorandum in opposition to this motion,[13] and mentioned by me at my oral hearing before the Second Circuit Court of Appeals panel. Although I disagree with much of the strained reasoning in the case, the court wrote, "[4] Likewise, the judges in their official capacities were not persons under §1983, except to the extent plaintiffs sued them for prospective injunctive relief." The court panel also overlooked my discussion of the principle of *stare decisis* on p. 7 of my appellant brief. I submit that the court panel's use of a U.S. Supreme Court decision as a precedent where the court was divided 5-4 and where the decision's reasoning was reversed a year later by the same court in *Howlett v.*

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[12] Ibid.
[13] Ibid.

Rose, 496 U.S. 356, 110 L.Ed.2d, 110 S.Ct. 2430 (1990), is misguided.

When I think of the tortuous and arduous path of this case litigation, I am reminded of Shakespeare's remarks in *Twelfth Night*: "If this were played upon a stage now, I could condemn it as an improbable fiction." Unfortunately, this litigation is no fiction. After reading the Second Circuit Court of Appeals panel summary order of December 19, 2005 and its decision denying my motion for rehearing which stated that not a single judge in regular active service of the Court of Appeals of the Second Circuit requested that a vote be taken after reading my petition for rehearing *en banc*, I am reminded of this section of the Declaration of Independence:

> In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People."

What is true of princes is also true of judges.

The petitioner respectfully petitions the U.S. Supreme Court to accept certification of his appeal of the U.S. Court of Appeals for the Second Circuit's panel summary order, dated December 19, 2005, affirming the district court's decision to dismiss all four of the plaintiff-appellant's claims, because the panel decision conflicts with a 2005 decision of the United States Supreme Court – *Exxon Mobil Corp. v. Saudi Basic Industries*, 125 S.Ct 1517, L.Ed.2d 454 (2005) – and a decision of the United States Court of Appeals for the Second Circuit – *Hoblock v. The Albany County Board of Elections* (2005 U.S. App. LEXIS 19071) – and consideration by the U.S. Supreme Court is therefore necessary to secure and maintain uniformity of Second Circuit Court of Appeals' decisions and consistency with those of the U.S. Supreme

Court, which the Second Circuit Court of Appeals contumaciously flouted by upholding a district court decision based on the reasoning of *Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d 195, 198-99 (2d Cir. 1996), *supra*, after having been presented with the case citation of *Exxon Mobil*, *supra*, and the relevant quotation from Justice Ginsburg's opinion reversing the erroneous reasoning of the Second Circuit Court of Appeals in *Moccio*, *supra*. The Second Circuit Court of Appeals, in so far as it ignored the clear language of 42 U.S.C. §1983 that specifically allows for suits against judicial officers, made factual inferences when considering a motion to dismiss that were neither advantageous to, nor claimed by, the plaintiff and refused to adjudicate the claims of error presented to it, departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of the U.S. Supreme Court's supervisory power. The petitioner also respectfully petitions the U.S. Supreme Court because the petitioner believes the proceeding involves three questions of exceptional importance: 1) Should future parties and federal courts be allowed to use the *Rooker-Feldman* doctrine as a subject-matter jurisdictional bar to cases whose constitutional claims have never been heard, especially since the passage of the Judiciary Act of 1988 that allows the U.S. Supreme Court to hear cases by certification only instead of by plaintiff demand, and thereby avoid jury review of a plaintiff's claims, a citizen's right guaranteed by the U.S. Constitution's Seventh Amendment? 2) Should 42 U.S.C. §1983 be interpreted to prevent all claims against the *ultra vires* or unconstitutional acts of state officials? and 3) should the principle of judicial immunity be expanded to include protection from suit for failure to perform ministerial acts which heretofore were subject to compulsion by writs of *mandamus*?

The obituary of Associate Justice William Brennan in the *New York Times Magazine* mentioned that Justice Brennan's

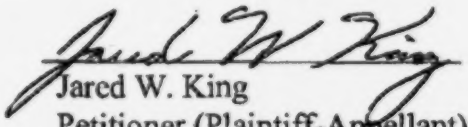
last public appearance was at an American Bar Association luncheon. A young lawyer in the audience asked him which case did he think was the most important to be considered his legacy. He answered without hesitation, "*Goldberg v. Kelly*." *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct 1011 (1970) was a 5-4 decision in which the court concluded that the Due Process clause of the U.S. Constitution's Fourteenth Amendment requires that a welfare recipient must be provided a hearing with basic due process - such as timely and adequate notice, the ability to confront adverse witnesses and present evidence before an impartial decisionmaker - before having welfare officials take the benefits away. Although I am not sure I agree with Justice Brennan that government entitlements such as welfare are sufficiently similar to property to be treated like it, I enthusiastically admire the fundamental decency and humanism underlying the decision and his recognition that the Constitution's protections apply to even this country's most abject citizens and that the right to a hearing is the fundamental first principle underlying Anglo-American jurisprudence. Constitutional claims regarding the denial of this right to any litigant – let alone a state criminal defendant - are indeed some of the more important claims that this court will encounter.

The bonds of comity that hold this Republic together will long survive if this court provides me a court forum to have my and similar constitutional and civil rights claims heard. Those bonds, and I suspect eventually the Republic itself, will perish if they are not.

The wealthy or those well-connected to those in political power may be in a position that obviates the need to come to a federal court to enforce their Constitutional rights; other U.S. citizens, myself included, are not that fortunate. Please help.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/23/06



Jared W. King
Petitioner (Plaintiff-Appellant)
156 S. River ST
Coxsackie, NY 12051-1409
(518) 258-3011
admin@financialpilot.com

APPENDIX

A-1. Plaintiff's Opposition to Motion to Dismiss

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jared W. King, *Plaintiff*	) Civ. Action No.: 303CV199
v.	)
State of Connecticut	)
Appellate Court (Official	)
Capacity), *Defendant*	) Date: March 11, 2004
	)

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

The plaintiff objects to the defendant's motion to dismiss because this U.S. district court does not lack jurisdiction over the subject matter of the complaint nor does the complaint fail to state a claim upon which relief can be granted, so that Fed.R.Civ.P. 12(b)(1) and 12(b)(6) do not apply.

A. Complaint is not Barred by the Eleventh Amendment or Sovereign Immunity

Mr. Schaefer accurately states the Eleventh Amendment. He, however, does not put it into historical context, and it may be helpful to the court in interpreting the amendment to do so. The Eleventh Amendment was both proposed and ratified within two years as a specific reaction to the U.S. Supreme Court's decision in *Chisholm v. Georgia*,[1] 2 U.S. (2 Dall.), 419, 1 L.Ed. 440 (1793), because of the American

[1]The Supreme Court held in a 4-1 *per seratim* (each justice wrote a separate opinion, as was the custom in the early Supreme Court) that, pursuant to Article III of the U.S. Constitution, the Supreme Court had jurisdiction in a case of a South Carolinian decedent's estate against the State of Georgia for Revolutionary war debts owed to the estate and then awarded a default judgment in the estate's favor because the State of Georgia had refused to appear.

public outcry over the fear of the expected liability of states to suits by Tory creditors for debts amassed by the states as colonies, a public sentiment exacerbated by the ill will between the new United States and Britain (*e.g.* impressment of U.S. seamen, refusal of Britain to vacate frontier forts and disputes over boundaries). At least in state courts, elected or state-appointed judges could protect their own, and in so doing, the financial burden on state citizens of these debt obligations could be expunged. What little Congressional debate occurred in the proposed amendment's congressional passage indicates, although the language of the amendment could not be more clear in protecting states from suit and damages, that the amendment was meant to bar federal jurisdiction in suits by non-citizens against a state for the payment of debts and damages for past actions absent specific Congressional authorization of the federal cause of action.

Many courts have recognized that the original basis of the principle of sovereign immunity, a sovereign above the rule of law, has little meaning in the United States in which the states have republican governments, so that the principle's and the Eleventh Amendment's purpose, in light of the Eleventh Amendment's enactment as a response to the U.S. Supreme Court's decision in *Chisolm, supra*, was to protect a state's fiscal integrity, *Huecker v. Milburn*, 538 F.2d 1241 (C.A.Ky 1976), *Jagnandan v. Giles*, 538 F.2d 1166 (C.A. Miss. 1976), *Jordan v. Gilligan*, 500 F.2d 701 (C.A. Ohio 1974), *etc*. Indeed, the first such decision constitutes the first interpretation of the Eleventh Amendment. Chief Justice Marshall in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 5 L.Ed. 257 (1821), concluded that the Eleventh Amendment applied only to suits filed against states to collect debts and that it did not apply to suits brought by the state against citizens, such as criminal proceedings.

The Eleventh Amendment provides immunity from suit and damages to the state, not necessarily to state agencies. In

determining whether a state agency will be considered the alter ego of the state and thus be immune from suit under the Eleventh Amendment, federal, and not state law, is to be applied, *Prendergast v. Long Island State Park Commission*, 330 F.Supp. 438 (D.C.N.Y. 1970) and *Raymond International, Inc. v. M/T Dalzelleagle*, 336 F.Supp. 679 (D.C.N.Y. 1971), although more recent cases from this court's circuit at least acknowledge the importance of state law and ultimate state liability in determining the independence of the state agency from its state, *Savage v. Kibbee*, 426 F.Supp. 760 (D.C.N.Y. 1976). In determining the independence of a state agency from its state, the powers, nature and characteristics of the agency must be critically examined under state law, and the two primary tests are the extent to which [the agency], although carrying out a state mission, functions with substantial autonomy from state government and the extent to which the agency is financed independently of the state treasury, *Unified School District No. 480 v. Epperson*, 583 F.2d 1118 (C.A.Kan. 1978).

The relevant part of Section One of the Fourteenth Amendment reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section Five of the Fourteenth Amendment reads: "The Congress shall have power to enforce by appropriate legislation, the provisions of this article."

The Judiciary Act of 1875 enlarged the scope of jurisdiction of the federal courts created by Article III of the U.S. Constitution. It specifically allowed for lower federal courts to entertain "all suits of a civil nature at common law or in equity, ... arising under the Constitution or laws of the United States," *Romero v. International Term Co.*, 358 U.S. 354, 362-365.

The enactment of the Fourteenth Amendment obligates the states to comply with privileges and immunities that Congress has provided the citizens of the United States. These privileges and immunities include the first ten Constitutional Amendments known commonly as the Bill of Rights and enforcement legislation such as 42 U.S.C. §1983. Obviously, in so far as a state were a defendant in a suit undertaken to enforce a state's obligations to comply with the provisions of the Fourteenth Amendment, a conflict would exist for courts between enforcing the terms of the Eleventh Amendment and those of the Fourteenth Amendment.

The Fourteenth Amendment postdates the Eleventh Amendment. A student of the law might thus reasonably assume that Congress' intent was to supersede the provisions of the Eleventh Amendment with those of the Fourteenth Amendment. Indeed, some lower federal courts, and the U.S. Supreme Court in, for example, *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999), have determined just that. Other lower federal courts have not, concluding that the provisions of the Eleventh Amendment and Fourteenth Amendment must be weighed and interpreted to as best meet the provisions of both. To do so, of course, is difficult. A description of a history of such attempts follows.

The seminal case involving the conflict of the provisions of the Eleventh Amendment and Fourteenth Amendment, mentioned by Mr. Schaefer also in passing, is *Ex Parte Young*, 209 U.S. 123 (1908). The U.S. Supreme Court concluded that the Eleventh Amendment's partial recognition of state sovereign immunity did not bar a federal injunction restraining a state attorney general from enforcing a state law that violated the Fourteenth Amendment's Due Process Clause. The reasoning behind this decision was that it is a state official who acts unconstitutionally in instances of constitutional mandamus (such as in the instant case), not the state, and a state official is neither protected by, nor can he

claim, the protection associated by the Eleventh Amendment. The "use of the name of the State to enforce an unconstitutional act is a proceeding ... which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting to use the name of the State to enforce a legislative enactment which is void because [it is] unconstitutional." The tenet that the principle of Sovereign Immunity does not apply in cases where a state official's actions are *ultra vires*, since the state would not be liable anyway, was mentioned frequently in Nineteenth Century cases, e.g. *In re Ayers*, 123 U.S. 443 (1887). Interestingly, even before the enactment of the Fourteenth Amendment, Chief Justice Marshall for the U.S. Supreme Court concluded that the applicability of the Eleventh Amendment and the principle of Sovereign Immunity do not apply in cases in which the injury done to the plaintiff was done by the state official, not the state, *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat) 738 (1824). This is an important case decision because justices who lived during the enactment of the Eleventh Amendment and who readily understood that it was never meant to be construed, as Mr. Schaefer is attempting to do, to exempt state officials from federal suit by private citizens to enforce their rights and privileges under federal law made it. Indeed, the judicial opinions in *Osborn*, *supra*, along with *Cohens v. Virginia, supra*, are the only two Supreme Court decisions made by justices who lived during the enactment of the Eleventh Amendment and who readily understood its significance and its limitations.

Injunctive relief granted to a plaintiff against a state because of the unconstitutional acts of its officials can still put a burden on the state, *e.g.* injunctions for busing. The U.S. Supreme Court in *Edelman v. Jordan*, 415 U.S. 651 (1974), limited the injunctive relief that can be granted to a plaintiff to prospective, not retroactive relief, although the court did allow retroactive relief to be paid by a state if it had

only an "ancillary effect" on the state treasury. The U.S. Supreme Court then notably reversed much of its conclusion in *Edelman, supra*, in a case from this federal district, *Fitzpatrick v. Bitzer, Chariman, State Employees' Retirement Commission*, 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d (1976). In a majority opinion of seven, with a concurring opinion of two, Justice Rehnquist, generally not perceived as being a crazy judicial activist, writing the majority opinion, concluded that the Eleventh Amendment and the principle of state sovereign immunity which it embodies are necessarily limited by enforcement provisions of the Fourteenth Amendment, (*e.g.* 42 U.S.C. §1983). He went further by concluding that an award of retroactive relief in the form of an award of backpay from the Connecticut state treasury to the plaintiffs in accordance with Title VII of the Civil Rights Act of 1964 was not barred by the Eleventh Amendment because "Congress in determining what legislation is appropriate for enforcing the Fourteenth Amendment may, as it has done in Title VII, provide for suits against States that are constitutionally impermissible in other contexts. The 'threshold fact of congressional authorization' for a citizen to sue his state employer, which was absent in *Edelman*, is thus present here." The court also affirmed the circuit court decision that an award of attorney's fees as a part of an award of costs associated with the Title VII legislation would "have only an 'ancillary effect' on the state treasury and could therefore be permitted as falling outside the Eleventh Amendment under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908)," *ibid* at 457. It affirmed its conclusion in *Fitzpatrick v. Bitzer, supra,* in *Hutto v. Finney*, 437 U.S. 678, 98 S.Ct 2565, 57 L.Ed.2d 614 (1978), in which the U.S. Supreme Court again recognized that the Eleventh Amendment and the principle of state sovereign immunity which it embodies are necessarily limited by enforcement provisions of the Fourteenth Amendment and that certain retroactive relief – in this case attorney's fees – associated

with the enforcement of a plaintiff's constitutional rights to be paid by a state's department of corrections was ancillary relief associated with a federal court's injunctive power and thus nonviolative of the Eleventh Amendment or of the principle of sovereign immunity. The U.S. Supreme Court followed the same reasoning in another case from this district, *Maher, Commissioner of Income Maintenance of Connecticut v. Gagne*, 448 U.S. 122, 100 S.Ct. 2570, 65 L.Ed.2d (1980), which notably involved a Connecticut state employee as the defendant in a 42 U.S.C. §1983 case, similar to the instant case. The Supreme Court again detemined that 42 U.S.C. §1988, which allows for costs including legal fees in 42 U.S.C. §1983 actions, showed sufficient Congressional intent to waive Eleventh Amendment protections against state liability. The court, though, went even further, determining that Congress may pass any enabling legislation (e.g. 28 U.S.C. §1331) pursuant to Section Five of the Fourteenth Amendment to enforce the Fourteenth Amendment's guarantees of U.S. citizens against states. One of the more recent expressions of the Supreme Court on this topic is *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999). It expands on the decisions of *Osborn v. Bank of the United States, supra*, and *Ex Parte Young, supra, et seq.*, apparently allowing even the suing of states, and not just state officials, for the unconstitutional acts of those officials. The Supreme Court concluded, "While this [Eleventh Amendment] immunity from suit is not absolute, we have recognized only two circumstances in which an individual may sue a State. First, congress may authorize such a suit in the exercise of its power to enforce the Fourteenth Amendment – an Amendment enacted after the Eleventh Amendment and specifically designed to alter the federal-state balance. *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). Second, a State may waive its sovereign immunity by consenting to suit. *Clark v. Barnard*, 108 U.S. 436, 447-448

(1883)," *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, supra*, at 670.

Mr. Schaefer has shown a disturbing display in his objection to his motion to dismiss, as he had done in his motion to be relieved of the requirements of Fed.R.Civ.P 26(f), of citing cases that not only do not generally support his contentions but often support their opposite. For example, Mr. Schaefer writes, "This provision [the Eleventh Amendment] makes it clear that the Constitution 'does not provide for federal jurisdiction over suits against nonconsenting States,' (p.2 of his memorandum), citing *Nevada Department of Human Resources v. Hibbs*, 123 S.Ct. 1972, 1976, a case in which the Supreme Court concluded in an opinion with only one dissent that state employees may collect money damages from the State of Nevada for violations of the Family Medical Leave Act, without including the very next sentence, "Congress may, however, abrogate such immunity in federal court if it makes its intention to abrogate unmistakably clear in the language of the statute and acts pursuant to a valid exercise of its power under §5 of the Fourteenth Amendment," (See Exhibit A). Mr. Schaefer writes, "'The Supreme Court has stated that it has not decided whether the Eleventh Amendment involves subject matter jurisdiction,' *Wisconsin Department of Corrections v. Schacht*, 524 U.S. 381, 391-92 (1998), (pp. 2 & 3 of his memorandum), without continuing that the Supreme Court determined this question in the case, determining that the Eleventh Amendment does not involve subject matter jurisdiction, concluding that the Eleventh Amendment is more analogous to a claim of privilege by a nonconsenting state, (See Exhibit B). *McGinty v. New York*, 251 F.3d 84 (2nd Cir. 2001) appears to ignore the previous Supreme Court determination of whether the Eleventh Amendment involved subject matter jurisdiction in *Wisconsin Department of Corrections v. Schacht, supra*, but then concluded, "Although sovereign immunity extends

beyond the literal text of the Eleventh Amendment to bar a citizen from suing his own state under federal question jurisdiction, ..., there are two recognized exceptions to the bar: when congress authorizes such a suit through enforcement of §5 of the Fourteenth Amendment, and where a state assents to being sued." *McGinty v. New York*, *supra*, at 91. Mr. Schaefer writes that *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98 avows that the Eleventh Amendment "affirms 'that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III." It does, but the court in the case also concludes, "The Court in *Ex Parte Young*, *supra*, recognized an important exception to this general rule: a suit challenging the federal constitutionality of a state official's action is not one against the State," at 89, 97-103. (See Exhibit C). Although the Eleventh Amendment may be a "'real limitation on a federal court's federal question jurisdiction,'" as Mr. Schaefer writes on p.3 of his memorandum, citing *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270, but the court also recognized in the same decision the exception the U.S. Supreme Court "has recognized for certain suits seeking declaratory and injunctive relief against state officers in their individual capacities," at 261. (See Exhibit D).

The pertinent conclusion of the U.S. Supreme Court in *Alden v. Maine*, 527 U.S. 706, 144 L.Ed.2d 636, 119 S.Ct 2240 (1999), attached as Exhibit A in my opposition memorandum to Mr. Schaefer's motion to be relieved of the requirements of Fed.R.Civ.P 26(f), is that sovereign immunity is a fundamental principle associated with the Constitution itself in addition to the Eleventh Amendment and provides immunity to states from suit by private citizens "except as altered by the plan ... constitutional convention or by certain constitutional amendments," (for example, the Fourteenth Amendment). The conclusion of the court in this case is that Congress cannot subject nonconsenting states to

private suits for damages from private citizens in their own courts. This conclusion does not preclude the very ordinary lawsuits in federal district courts against state employees to enforce rights of private citizens guaranteed by the Fourteenth Amendment or other constitutional rights applied to states by the Fourteenth Amendment. It also does not preclude lawsuits by private citizens in federal district court or state court against states where retroactive monetary damages are not claimed. Moreover, four of the justices went further, concluding in their dissent that "there was no evidence that any concept of inherent sovereign immunity was understood historically to apply when the sovereign sued was not the font of law, (That is, sovereign immunity does not apply to private suits to enforce federal laws against states - let alone state employees - in federal courts, only to private suits against the United States.).

This conflict in the U.S. Supreme Court seems to have carried over into another 5-4 decision of the court, *Federal Maritime Commission v. South Carolina State Ports Authority*, 122 S.Ct. 1864 (2002). I have attached Justice Stevens' dissent in its entirety as Exhibit E. Lucid and dead-on correct as Justice Stevens generally is, this dissent elaborates on my discussion of the history of the enactment of the Eleventh Amendment and explains how the Eleventh Amendment is a limitation on a federal court's subject matter jurisdiction but is not a limit on its personal jurisdiction, (That is, a state is not immune from a federal court's process, even if that process is inferred by the state to affect its dignity, as Mr. Schaefer propounded in his motion to be relieved of the requirements of Fed.R.Civ.P 26(f)). I include modern cases in my argument because I know that courts feel more bound by the conclusions of current court decisions than the wisdom of older decisions, but it is only through the study of the historical cases and legislative notes that keep current court interpretations of laws to be consistent with what their framers' intended.

Frew v. Hawkins, Jan. 14, 2004, Slip Op. 5, the summary of which is attached as Exhibit F, the latest word from the Supreme Court on this subject, did nothing to limit suits against state officials engaging in unconstitutional conduct. Indeed, the decision emphasizes that the Eleventh Amendment does not bar federal courts from enforcing their consent-decree judgments against state officials. "Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, that decree may be enforced. See *Hutto v. Finney*, 437 U.S. 678," *Frew v. Hawkins*, *supra*, at 1.

Although the Supreme Court in *Quern v. Jordan*, 440 U.S. 332 (1975) concluded that 42 U.S.C. §1983 did not abrogate the Eleventh Amendment, the court specifically reaffirmed its conclusion in the previous manifestation of the case, *Edelman v. Jordan*, *supra*, that injunctive relief granted under §1983 can be granted to a plaintiff, but only for prospective, not retroactive relief, although retroactive relief to be paid by a state that had only an "ancillary effect" on the state treasury could be awarded. "Nor does our reaffirmance of Edelman render §1983 meaningless insofar as States are concerned. See *Ex Parte Young*, 209 U.S. 123 (1908)," *Quern v. Jordan*, *supra*, at 345. (See Exhibit G).

The Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), mentions in passing that the nature of relief sought is irrelevant under the Eleventh Amendment. However, this conclusion does not affect suits against state officials for their unlawful conduct or suits against states themselves where Congress has unequivocally abrogated the immunity. "Congress may abrogate the State's sovereign immunity if it has 'unequivocally expresse[d] its intent to abrogate the immunity' and has acted 'pursuant to a valid exercise of power,'" *Seminole Tribe of Florida v. Florida*, *supra*, at 44. Although one of the conclusions, Conclusion (3), of the majority opinion in *Puerto Rico Aqueduct and Swear Authority v. Metcalf & Eddy, Inc.*, 506

U.S. 139, 121 L.Ed.2d 605, 113 S.Ct. 684 (1993), attached as Exhibit B in my opposition memorandum to Mr. Schaefer's motion to be relieved of the requirements of Fed.R.Civ.P. 26(f), is "the value to the states of their Eleventh Amendment immunity is for the most part lost as litigation proceeds past motion practice," the principal conclusion of the court in the case is that federal court action denying state Eleventh Amendment claims should be immediately appealable. Moreover, Justice Blackmun in his concurring opinion expressed the view that "the Eleventh Amendment guaranteed immunity from suit in a narrow class of cases." Although the court extended Eleventh Amendment immunity to the Puerto Rico Aqueduct and Sewer Authority, they did not necessarily extend such immunity to all such state agencies; the immunity depends on a number of factors including the level of autonomy of the agency and most important, the financial independence of its funds from the state treasury. The Supreme Court in *Florida Department of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1980), attached as Exhibit H, mentions in passing that the "Eleventh Amendment, while barring an action directly against the state itself or any agency thereof," but affirms in the same sentence that the Eleventh Amendment "does not bar an action against a state official that is based on the theory that the official acted beyond the scope of his statutory authority or, if within that authority, that such authority is unconstitutional," *ibid* at 671, the same conclusions of *Osborn v. Bank of United States*, *supra*, *Ex Parte Young*, *supra*, *et seq*. Justice Stevens goes on to reaffirm the conclusion of *Edelman*, *supra*, regarding retrospective relief, "The Eleventh Amendment, however, limits the relief that may be recovered in the latter kind of action; the judgment may not compel the State to use its funds to compensate the plaintiff for his injury, pp. 683-90," *Florida Department of State v. Treasure Salvors, Inc.*, *supra*, at 671.

Mr. Schaefer cites a circuit court and district court case to support his argument that state agencies protected under the Eleventh Amendment include state courts, *Landers Seed Co. v. Champaign National Bank*, 15 F.3d 729 (7th Cir. 1994) and New York State Appellate Division Justices, *Sassower v. Mangano*, 927 F.Supp. 113 (S.D.N.Y. 1996). The court in *Landers* concludes, "The Eleventh Amendment bars federal jurisdiction here since the Illinois Supreme Court itself is the named defendant and not the individual members of that court," at 732. The court goes further in claiming that after substituting the justices of the Illinois Supreme Court themselves as the defendants, the plaintiff failed to serve the justices with summonses and complaints as required by Fed.R.Civ.P. 21. Perhaps there has been a renumbering of the Fed.R.Civ.P. since 1994, but Rule 21 has to do with the misjoinder and non-joinder of parties. (See Exhibit I). I will discuss this case more fully in my concluding remarks. *Sassower v. Mangano, supra*, is a case involving a disbarred attorney whom the New York State Appellate Division had ordered to undergo a state psychiatric examination. It is obvious from reading the case history that subsequent courts hearing the case thought her continuing claims to be frivolous, and she to be mentally ill. As such, this case is not the best to use as precedent. Even so, the court predictably concludes that the Eleventh Amendment precludes suits brought in federal court against states or its agencies where there is no express statutory waiver or consent and that the Eleventh Amendment bars actions against state officials, where the state officials are not the party of interest. This conclusion finds its origination with the conclusion of the court in *Edelman, supra*, where the plaintiffs were not suing the state officials to stop their unconstitutional conduct, as in the case before this court, but were naming individual state officials as a subterfuge for their real interest in suing the state. This case is consistent with other cases that follow the logic of *Edelman, supra*. As with *Edelman*, this conclusion

should not be interpreted to prevent suits against state officials made in accordance with the Fourteenth Amendment regarding their actions' deprivations of a plaintiff's constitutional rights guaranteed by §5 of the Fourteenth Amendment.

The judges who comprise the State of Connecticut Appellate Court, sued in their official capacity, are not immune from suits of Constitutional mandamus associated with 28 U.S.C. §1331 and from suits associated with 42 U.S.C. §1983. The Eleventh Amendment and the common law principle of sovereign immunity do not provide immunity from lawsuits to State of Connecticut employees. Some federal courts, generally at the circuit court level have found that the Eleventh Amendment voids damages against state officials in their official capacity, since a state would be liable for them. Other courts, including the U.S. Supreme Court on numerous occasions, such as *Ex Parte Young, supra, Edelman v. Jordan, supra, Fitzpatrick v. Bitzer, supra, Hutto v. Finney, supra, Maher v. Gagne, supra, College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, supra, Pennhurst State School & Hospital v. Halderman, supra, Idaho v. Coeur d'Alene Tribe of Idaho, supra, Frew v. Hawkins, supra, Quern v. Jordan, supra, Florida Department of State v. Treasure Salvors, Inc., supra,* have exempted specifically Constitutional mandamus claims under the Fourteenth Amendment and 42 U.S.C. §1983, although retrospective relief may be limited to relief having only an "ancillary effect" on the state treasury, *e.g.* an award of costs or attorney's fees. Requests for prospective relief and relief associated with enforcement of federal court judgments are unaffected, because these requests do not affect the sovereign control of the citizens of Connecticut over their state.

The judges who comprise the State of Connecticut Appellate Court, sued in their official capacity, are the defendant in this case, not the State of Connecticut. They

lack the authority to waive any claim to the protections to states associated with the Eleventh Amendment and the common law principle of sovereign immunity.

B. The Appellate Court of the State of Connecticut is a Person Under 42 U.S.C. §1983

The members of the State of Connecticut Appellate Court, sued in their official capacity, are persons that can be sued under 42 U.S.C. §1983. *Will v. Michigan Department of State Police*, 491 U.S. 58, 105 L.Ed.2d 45, 109 S.Ct. 2304 (1989), cited by Mr. Schaefer and attached as Exhibit G in my opposition memorandum to his motion to be relieved of complying with Fed.R.Civ.P. 26(f), involves a 5-4 decision of the U.S. Supreme Court affirming a judgment of the Michigan Supreme Court that neither a state nor a state official acting in his or her official capacity is a "person" under 42 US §1983. I think that the conclusions under Section (1) are straight-forward, namely that the Michigan Department of State Police, just as the State of Connecticut, is not a "person" under 42 U.S.C. §1983, and that Congress did not intend to create a cause of action under §1983 against states in state courts, "which were precisely the courts that Congress sought to allow civil rights claimants to avoid through §1983," a situation different than the instant case which has been filed in federal district court. What bears some brief discussion is the court's conclusion of Section (2) of its decision, that the Michigan Director of State Police was not a "person" subject to liability under §1983, because a suit for *nonprospective* (emphasis added) relief against a state official in his or her official capacity is a suit against the official's office and, as such, is no different from a suit against a state itself. The key word in the decision is "nonprospective." *Edelman v. Jordan*, 415 U.S. 651 (1974), decided that the conclusion of the court in the seminal case on this subject, *Ex Parte Young*, 209 U.S. 123 (1908), which determined that a state's Eleventh Amendment and sovereign immunity did not apply to suits brought by private citizens to

enforce their Fourteenth Amendment rights violated by state officers, should be limited to prospective and injunctive relief, while the Eleventh Amendment should provide states protection from retroactive monetary relief, such as what was apparently requested in *Will v. Michigan Department of State Police*. I would also take note of the reasoning of the four-justice dissent in this case, which would allow states, not just state officials, to be sued under 42 U.S.C. §1983, although because I am suing state officials, not the state, this dissent is moot. The conclusion of the U.S. Supreme Court in *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d, 110 S.Ct. (1990), attached as Exhibit I in my opposition memorandum to Mr. Schaefer's motion to be relieved from the requirements of Fed.R.Civ.P. 26(f), is interesting because it appears to have reversed the conclusion in *Will v. Michigan Department of State Police*, *supra*, that a state or a state official acting in his official capacity is not a "person" for purposes of 42 US §1983. In this case, the U.S. Supreme Court unanimously decided that "a state-law defense of sovereign immunity is not available to a school board in a §1983 action brought in a state court that otherwise has jurisdiction over the case, where a sovereign-immunity defense would not be available if the action were brought in a federal forum," (That is, the U.S. Supreme Court is allowing sovereign-immunity defenses, for example, the denial of retroactive monetary damages in *Edelman v. Jordan*, 415 U.S. 651 (1974), but is notably finding that the Superintendent of Schools for Pinellas County, Florida, Scott Rose, in his official capacity, can be sued and that state liability for claims not covered by sovereign immunity - prospective and injunctive relief, costs of an action, attorney's fees, monetary damage awards considered to have an "ancillary effect" on the state's treasury, *etc.* - can exist and that state courts have an obligation to entertain 42 U.S.C. §1983 cases in their courts because of U.S. Constitution, Article VI, cl 2.). Mr. Schaefer cites the circuit court case, *Harris v. Champion*, 51 F. 3d 901,

905-906 (10th Cir. 1995) to support his argument that "a state court is not a person under § 1983 and not subject to suit under it," (p. 6 of his memorandum). He noticeably does not include, however, the very next two sentences for the court's review, "Likewise, the judges in their official capacities were not persons under §1983 except to the extent plaintiffs sued them for prospective injunctive relief. See *Will*, 491 U.S. at 71 & n. 10, 109 S.Ct. at 2312 & n. 10." (See Exhibit J). This is the same conclusion as *Will v. Michigan Department of State Police*, *supra*, that state officials, whether they be judges or not, can be sued under §1983 but relief will be restricted to prospective relief except for awards such as those under 42 U.S.C. §1988 which allow for an award of costs and attorney's fees to the claimant. The Court of Appeals, Second Circuit, makes a similar conclusion in *Zuckerman v. Appellate Division, Second Department, Supreme Court of the State of New York*, 421 F.2d 625 (2nd Cir. 1970). The court concluded "that the Appellate Division, as part of the judicial arm of the State of New York, must also not be a 'person' within the purview of the section of the Civil Rights Act," at 626. The circuit court's decision does not conclude that the judges themselves are not persons within the purview of 42 U.S.C. §1983.

Even in cases where a state official is recognized to have absolute immunity, such as a prosecutor in role as an advocate for the state, that immunity with respect to 42 U.S.C. §1983 does not extend to acts outside of the role as an advocate for the state, such as his role as an investigator or as a spokesman to the media, *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993).

Mr. Schaefer again claims that what he claims to be a defect – that the Connecticut Appellate Court, as a state agency, is not a person under 42 U.S.C. §1983 – is non-waivable, (p. 7 of his memorandum), citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 137 L.Ed.2d 170, 117 S.Ct. 1055 (1997), attached as Exhibit H in my

opposition memorandum to Mr. Schaefer's motion to be relieved from the requirements of Fed.R.Civ.P 26(f), and *Howlett v. Rose*, 496 U.S. 356, 110 L.Ed.2d, 110 S.Ct. (1990), attached as Exhibit I to that same memorandum, as supporting this contention. As might be expected based on Mr. Schaefer's record with his previous citations, this assertion of his is false. The conclusion of the U.S. Supreme Court in *Arizonans* was that the prospective relief sought by the plaintiff pursuant to 42 U.S.C. §1983 was moot because the plaintiff had found a job in the private sector. It is noteworthy that although the district court dismissed the 42 U.S.C. §1983 claim against the State of Arizona and other defendants, it allowed to stand the suit against the state official, the governor of Arizona, in his official capacity, and that the U.S. Court of Appeals affirmed this decision. Note also in affirming the decision of the district court, it awarded only nominal damages, because there was little, if any, prospective damage done to the state employee since the state employee had left state employment. The conclusion of the U.S. Supreme Court in *Howlett* is especially interesting, given that it appears to have reversed the conclusion in *Will v. Michigan Department of State Police*, *supra*, that a state or a state official acting in his official capacity is not a "person" for purposes of 42 US §1983. Please see my review of *Howlett*, *supra*, in the second paragraph preceding this one.

C. *Rooker-Feldman* Doctrine Does Not Apply, so Subject Matter Jurisdiction is Unaffected

The *Rooker-Feldman* doctrine, which asserts that a federal district court cannot review matters actually decided by a state court, does not apply to this case. The doctrine, as set forth in *Rooker v. Fidelity Trust Co.*, 263 U.S. 403 (1923), states that "where a judgment has been rendered, after due hearing, by a state trial court, with jurisdiction of the subject matter and parties, and affirmed by the state Supreme Court, the only resort under the legislation of Congress, for correction of errors in deciding questions involving he

Constitution, is to the appellate jurisdiction of this court," which in accordance with Article III, §2, is the U.S. Supreme Court. The court in *Rooker* concluded, "The District Court has no jurisdiction of a suit brought there by the party who was defeated in the state courts, against his *successful opponents* (my emphasis added)," (*Rooker* at 414). The U.S. Supreme Court affirmed the same doctrine in *District of Columbia Court of Appeals v. Feldman*,[2] 460 U.S. 462 (1982), but underscored that the doctrine did not apply – that district courts did have subject matter jurisdiction – in general challenges to the constitutionality of rules promulgated by a state court which do not require the review of a final state-court judgment in a particular case. In a circuit court case involving a 42 U.S.C. §1983 case, *Charchenko v. City of Stillwater*, 47 F.3d 981 (8th Cir. 1995), the court ruled that the 42 U.S.C. §1983 action of the plaintiff was not barred from being heard in the federal district court because the state court had dismissed the claim, having decided it lacked subject matter jurisdiction over the 42 U.S.C. §1983, so that it did not review the claim on its merits. In *Johnson v. Rodriques* (Orozco), 226 F.3d 1103 (10th Cir. 2000), the circuit court decided that the *Rooker-Feldman* doctrine did not apply because the plaintiff was not a party to the state court case, and moreover, the complaint addressed a general challenge to the constitutionality of Utah's adoption laws that did not force the federal district court from entertaining a challenge to a state court's judgment or entertain a challenge that was "inextricably intertwined" with such a judgment. To quote from the decision, "We are persuaded that the district court erred in dismissing Plaintiff Johnson's complaint under the *Rooker-*

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[2]Because the District of Columbia Court of Appeals is the maker of the state bar admission rules, it was a party in *Feldman*, along with being the adjudicator in the case. This is different than the situation before this court, where the State of Connecticut was the party before the Connecticut Appellate Court as an adjudicator, and the judges of the Connecticut Appellate Court are being sued in their official capacity.

Feldman doctrine for two basic reasons. First, he was not a party to the state court adoption proceeding, a fact which makes the doctrine inapplicable. And, second, Plaintiff's discrete general challenge to the validity of the Utah adoption laws must be considered, thus distinguishing this case from one challenging the merits of a particular state court ruling," (*Johnson v. Rodrigues (Orozco)* at 1108). The court in *Johnson v. Rodrigues (Orozco), supra*, at 1108, also asserted the well-accepted common-law tenet that in determining whether a complaint should be dismissed, it should be evaluated by construing its assertions in the plaintiff's favor. "We are reviewing a dismissal and must read the complaint liberally, construing all reasonable allegations in the Plaintiff's favor," citing *Skrzypckak v. Kauger*, 92 F.3d 1050, 1053 (10th Cir. 1996) and *McGarry v. Board of County Commoners of Pitkin County*, 175 F.3d 1193, 1198 (10th Cir. 1999). Another example is *Johnson v. De Grandy*, 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d (1994), where the U.S. Supreme Court rejected the State of Florida's argument that the *Rooker-Feldman* doctrine applied to a matter already decided in the Supreme Court of Florida, but where the United States had not been a party. "The invocation [*sic*] of *Rooker/Feldman* is just as inapt here, for unlike *Rooker* or *Feldman*, the United States was not a party in the state court. ... The United States merely seeks to litigate its §2 case for the first time, and the Government's claims, like those of the private plaintiffs, are properly before the federal courts," (*Johnson v. De Grandy* at 1005-1006).

As Mr. Schaefer accurately describes it, the *Rooker-Feldman* doctrine is a prohibition on "district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to [the Supreme] Court," (p. 7 of his memorandum) in Article III, §2 of the U.S. Constitution. The doctrine requires a number of necessary conditions for its evocation. First, just as in any appellate proceeding, the parties in the matter before the federal district

court must include the same parties as those in the state court. "The parties to the bill are the same as in the litigation in the state court, but with an addition of two defendants whose presence does not need special notice," (*Rooker* at 414). Second, the state court needs to decide the case on the merits. "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions state in the bill actually arose in the cause, it was the province and *duty of the state courts to decide them* (my emphasis); and their decision, whether right or wrong was an exercise of jurisdiction," (*Rooker* at 415), or from *Feldman*, "[The proceedings before the District of Columbia Court of Appeals] involved a 'judicial inquiry' in which the court was called upon to investigate, declare and enforce 'liabilities as they [stood] on present or past facts and under laws supposed already to exist,'" (*Feldman* at 462). Third, relief requested in the district court either needs to reverse the state court decision or be "inextricably intertwined" with the state court decision, where "inextricably intertwined" means that the federal claim succeeds only to the extent that the state court wrongly decided the issues before it, *Keene Corp. v. Cass*, 908 F.2d 293, 296 (8th Cir. 1990). As a corollary to the third requirement, federal district courts do have jurisdiction over general challenges to the constitutional validity of state laws or rules involved in state cases, just not to the application of those laws and rules to a specific case, *Feldman*, *supra*.

In the instant matter before this court, the state case was a criminal prosecution, *State of Connecticut v. King*, in which the parties were the State of Connecticut and the current plaintiff, and the subject matter before the Connecticut Appellate Court was the clear error of the trial court's judgment and, as Mr. Schaefer correctly states, "The

Appellate Court dismissed [my] appeal on November 22, 2000, for failure to file the acknowledgment of the transcript order," (p. 11 of his memorandum). Neither the constitutional claims nor the 42 U.S.C. §1983 claim were made to the Connecticut Appellate Court. The present case is the plaintiff's request for a writ of Constitutional mandamus to compel the Connecticut Appellate Court, in their official capacity, to fulfill their obligations under the U.S. Constitution in the exercise of their office. The parties are not the same, so the *Rooker-Feldman* doctrine does not apply.

It is noteworthy that the complaint says nothing about the underlying subject matter of the criminal complaint or interferes with the exercise of the Connecticut Appellate Court's jurisdiction in reviewing the U.S. Constitutional defects and other clear error of the trial court's judicial trial in the case. None of the claims included in this lawsuit were made to the Connecticut Appellate Court in its decision in *State of Connecticut v. King*. The constitutional challenges incorporated in Claims One and Two of the complaint before this court were included in a petition for certification to the Connecticut Supreme Court to review the Connecticut Appellate Court's ruling. The court denied the petition, so that it chose not to review these claims and make a decision upon them. Mr. Schaefer is also attempting to construe my *Motion to Re-open Appeal Dismissed by 11/22/00 Order*, dated 6/27/03, as including the three constitutional claims included in my complaint, as having been an adjudication of these claims by the Connecticut Appellate Court. It was not. The original and fifteen copies the court required with this motion's filing were returned to me, with the time stamp crossed out, accompanied by the cover sheet which precedes it in Mr. Schaefer's Exhibit A. I was instructed to file a motion seeking permission from the Connecticut Appellate Court to file said motion. That permission was denied, as the last page of Mr. Schaefer's Exhibit A shows. The Court of

Appeals, Second Circuit concluded in *Kropelnicki v. Siegel*, 290 F.3d 118, (2nd Cir. 2002), "Where the subject claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not 'inextricably intertwined' and therefore not barred by the *Rooker-Feldman* doctrine," at 119. The court in *Phifer v. City of New York*, 289 F.3d 49, came to the same conclusion. The court did make the statement, "[a] case might arise that would directly challenge a state court judgment in a way that the Supreme Court clearly envisioned would be barred by *Rooker-Feldman* and yet for some reason not be precluded, " at 56-57. The sentence the court wrote just before this one is illuminating: "We are disinclined at present to extend or amplify the *Rooker-Feldman* doctrine beyond the 'minimum' specified in *Moccio*, absent circumstances not presented by this case." To date, the *Rooker-Feldman* doctrine has not been so extended or amplified. The Court of Appeals of the Second Circuit in *Texaco, Inc. v. Pennzoil Co.*, 784 F.2d 1133 (2nd Cir. 1987) also chose not to extend or amplify the *Rooker-Feldman* doctrine by allowing Texaco to proceed with its claims that were not previously heard in the Texas state court and indeed, decided arguably to reduce the scope of the doctrine. Similar to what Mr. Schaefer has argued in his memorandum, Pennzoil asked the circuit court to apply the doctrine broadly to preclude federal review of issues which a party could have raised in the state court proceeding, not just what was, in fact, reviewed in the state court proceeding, *Rooker, supra.* The circuit court rejected Pennzoil's argument. "Rather, Pennzoil contends that Texaco's claims are barred because *Rooker-Feldman* should be read broadly to preclude federal review of issues which a party could have raised in the state court proceeding but chose to withhold from the state court. We disagree," at 1144. Thus, the second requirement of the *Rooker-Feldman* doctrine does not apply.

Mr. Schaefer claims, on p. 12 of his memorandum, "[The plaintiff] then filed a motion to reopen the dismissed appeal on July 17, 2003, which was denied on Sept. 2, 2003." This claim is false. As can be seen from reviewing the last two pages of Mr. Schaefer's Exhibit A, the motion filed on July 17, 2003 and denied on Sept. 2, 2003 was for permission to file the previously returned motion to re-open the dismissed appeal.

Moreover, I attempted to file my *Motion to Re-open Appeal Dismissed by 11/22/00 Order*, dated 6/27/03, with the Connecticut Appellate Court at the request of the chief clerk of the Connecticut Appellate Court, Michelle Angers, who told me at the time that she would prefer I request the Connecticut Appellate Court to re-open the case before filing a federal lawsuit. Shame on Mr. Schaefer for attempting to use my accommodation of a request by the Connecticut Appellate Court chief clerk into something nefarious or a constructive waiver of my rights to be heard on the serious constitutional grievances I have with the conduct of the judges who comprise the Connecticut Appellate Court.

Mr Schaefer asserts in his memorandum, "There is no evidence that plaintiff ever filed [a motion to review Judge Grogins' order] to challenge Judge Grogins' order regarding the transcript fees, although he had a full and fair opportunity to do so. Compare *Kropelnicki*, 290 F.3d 118, 129 (2d Cir. 2002) ("Connecticut law nonetheless afforded [plaintiff] a full and fair opportunity to raise [the] claim [in that case] in state court.") It is plaintiff's burden to show that state procedural law barred presentation of his claims. *Pennzoil v. Texaco, Inc.*, 481 U.S, 1, 14 (1987). He fails to meet it." The reason why no such order was filed was that Judge Grogins lacked the legal authority to issue any such orders in the case and lacks the legal jurisdiction to review them, as explained in my *Motion to Vacate-11/14/00 Order* and my petition for certification to the Connecticut Supreme Court, "By allowing Judge Grogins to issue purported orders in this

case without a specific grant of jurisdiction by the appellate court, the appellate court sanctioned Judge Grogins' violation of §60-2 of the *Connecticut Rules of Court*, in which the Connecticut legislature has granted the appellate court its broad and absolute jurisdiction of the appeals before it," (third unnumbered page of *Petition for Certification*). Neither the Connecticut Supreme Court at the time nor the Connecticut Appellate Court within the past year granted me even permission to review these claims. Connecticut procedural rules, §84-1 *et seq.* and §60-2 and §71-5 of the *Connecticut Rules of Court*, required that these motions for permission be filed before either the Connecticut Supreme Court or Connecticut Appellate Court would review my claims. Connecticut procedural law thus barred presentation of these claims, Mr. Schaefer's assertion that I have failed to meet any purported burden notwithstanding.

The reason why portions of the complaint "track if not duplicate this motion" is because they were put in the federal complaint, after the Connecticut Appellate Court refused to grant permission to be heard on these matters. The judges' refusal to allow me to be heard is why this lawsuit was filed.

Mr. Schaefer's argument in his memorandum is that because some of the relief requested in my complaint satisfies the third requirement of the *Rooker-Feldman* doctrine – that the federal claim either reverse a state court decision or is "inextricably intertwined" with it – the *Rooker-Feldman* doctrine applies in this case. This argument, however, is fallacious because neither the first nor second requirements for the evocation of the doctrine is satisfied, so that the *Rooker-Feldman* doctrine does not apply.

D. There is no Lack of Diversity Jurisdiction

This court has jurisdiction over the group of individual judges comprising the State of Connecticut Appellate Court, sued in their official capacity, under 28 U.S.C. §1332. They are neither a state of the United States nor an arm of the State, as Mr. Schaefer claims on p. 15 of his memorandum.

Ironically, Mr. Schaefer cited *Moor v. County of Alameda*, 411 U.S. 693, 36 L.Ed.2d 596, 93 S.Ct. 1785 (1973), attached as Exhibit K in my opposition memorandum to Mr. Schaefer's motion to be relieved of complying with Fed.R.Civ.P. 26(f), a case that concludes just the opposite of his contention that "neither the State nor an arm of the State is a citizen for diversity purposes." The U.S. Supreme Court concluded that the defendant "county was a citizen of the state for diversity jurisdiction purposes." Moreover, although the U.S. Supreme Court affirmed the part of the district court decision that the county was not a "person" subject to liability pursuant to 42 U.S.C. §1983 in *Moor v. County of Alameda*, *supra*, even the district court did not dismiss the 42 U.S.C. §1983 claims against the county peace officers.

E. Conclusion

Putting aside the question of whether the state agency, the Connecticut Appellate Court, should qualify for Eleventh Amendment protection, the answer of which depends on the level of autonomy of the agency and its financial independence from the state treasury, (See p. 2 of this memorandum), this case boils down to a question of who is being sued. If this court determines that I have sued the State of Connecticut, something that is facially false, then Eleventh Amendment protection would apply, 42 U.S.C. §1983 would not apply and the *Rooker-Feldman* Doctrine would apply. If this court determines that I have sued the Connecticut Appellate Court as a state agency, there may be the need for some discovery to determine the level of autonomy of the Connecticut Appellate Court and how independent its funds are from the state treasury. Depending on the answers to those two questions, this court may or may not find the Eleventh Amendment applies and 42 U.S.C. §1983 may or may not apply. The Rooker-Feldman doctrine would still not apply, but it would be moot. If the court finds that I am suing state officials, then the Eleventh Amendment does not apply,

42 U.S.C. §1983 applies and the *Rooker-Feldman* doctrine does not apply.

Interpretation as to whether I am suing the Connecticut Appellate Court as a body of judges in their official capacity or as a state should be interpreted in my favor, *Johnson v. Rodriques* (Orozco), 226 F.3d 1103, 1108 (10th Cir. 2000), "We are reviewing a dismissal and must read the complaint liberally, construing all reasonable allegations in the Plaintiff's favor," citing *Skrzypckak v. Kauger*, 92 F.3d 1050, 1053 (10th Cir. 1996) and *McGarry v. Board of County Commoners of Pitkin County*, 175 F.3d 1193, 1198 (10th Cir. 1999). What I am trying to do with this case is to compel the Connecticut Appellate Court judges, who sit as a body and made decisions as a unified body, to fulfill their mandatory responsibility to act in a manner that does not violate a number of my rights protected by the U.S. Constitution. I am alleging in the complaint that the Connecticut Appellate Court judges' actions or, perhaps more accurately, inaction, violated my constitutional rights. I took great pains to attempt to request relief to address the court's constitutional violations while not affecting the authority of the Connecticut Appellate Court to determine *State of Connecticut v. King*, *e.g.* by providing options to the court, such as either reopening the case and ordering the acknowledgment form that the court requires be turned over to me so that I can submit it to the court as required, or voiding the convictions if it chooses it does not want to do this, by using the federal court's mediation and early intervention services to craft a solution to my grievances that respects the state court's autonomy, while insuring that my constitutional rights are protected. I have filed a successful Article 78 proceeding, which is New York State's statutory writ of mandamus proceeding, once before against a judge who thought he had the right to suspend my motor vehicle license after I failed to appear at a preliminary court date for which I had failed to receive notice. Thankfully, the New York State Supreme

Court, the Hon. George L. Cobb presiding, recognized that my Fourteenth and Sixth Amendment rights had been violated by such conduct and re-instated my license and awarded me costs. My request for punitive damages, if allowed, is merely "the stick" to convince the Connecticut Appellate Court to take my concerns about the integrity of their judicial process seriously. So far, from reading Mr. Schaefer's memorandums, the court appears to be in denial.

A legitimate question is whether service upon the chief clerk of the Connecticut Appellate Court has allowed this court to obtain personal jurisdiction over the judges of the Connecticut Appellate Court, (See *Landers*, *supra*, a circuit court case). As stated before, my intention in this case is to sue the judges who sit on the Connecticut Appellate Court at any given time, since they comprise the body to which this suit is directed. I am suing the judges only in their official capacity; I have no interest in harming them personally, and I recognize, and the court and Mr. Schaefer should recognize, that judges on this body, through retirements, promotions and appointments, have changed during *State of Connecticut v. King* numerous times. Service upon the group of judges as a body at their office seems to me to be the appropriate way of informing this group of judges of the existence of this suit. The U.S. Supreme Court has set forth the test of whether personal jurisdiction has been obtained over a defendant in *Insurance Corporation v. Compagnie des Bauxites*, 456 U.S. 694 (1982). The "test for personal jurisdiction requires that 'the maintenance of the suit ... not offend traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived. In *McDoonald v. Mabee*, *supra*, the Court indicated that regardless of the power of the State to serve process, an individual may submit to the jurisdiction of the court by appearance," at 702-703.

The Court of Appeals, Second Circuit has just issued a decision reviewed in the New York Law Journal on Wednesday, March 10, 2004, *Wynder v. McMahon*, 02-9101, in which Judge Calabresi, in determining what the sufficient requirements of the form of a complaint under Fed.R.Civ.P. 8(a) are, wrote, "The key to Rule 8(a)'s requirements is whether adequate notice is given." I submit that that ought to be the sufficient requirement for any service of process in this case.

The U.S. Supreme Court has interpreted the Eleventh Amendment as limiting relief to plaintiffs caused by state officials' actions to be paid by the state treasury to prospective relief, prohibiting retroactive monetary awards to only those that would have an "ancillary effect" on the state treasury, *e.g.* costs and attorney's fees (Sometimes those attorney's fees add up; in one case, they were $350,000), *e.g. Edelman v. Jordan, supra*, to monetary relief that Congress expressly has allowed by statute, *e.g. Maher v. Gagne, supra*, or to any amount to which the state consents, *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, supra*. I look forward to working with the court and Mr. Schaefer in crafting remedies to my injuries that are consistent with these requirements.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed first class, postage prepaid to Daniel Schaefer, Assistant Attorney General, Office of the Attorney General, 55 Elm ST, P.O. Box 120, Hartford, CT 06141-0120 on March 12, 2004.

_____

Jared King, *Plaintiff*

A-2. Rule 3.3 Violation Letter to U.S. District Court

Dear Judge Hall:

I have finished reading Daniel Schaefer's *Memorandum in Reply to Plaintiff's Memorandum in Opposition to Motion to Dismiss*.

This letter is not an attempt to go around the Federal Rules of Civil Procedure or local court rules. I am not responding to Mr. Schaefer's legal arguments; rather, I am reporting to the court Mr. Schaefer's violation of Rule 3.3 of the *Connecticut Rules of Professional Conduct*.

In Mr. Schaefer's *Memorandum in Reply*, Mr. Schaefer has attached the cover page of the complaint form that was served upon Michelle Angers by me along with the waiver of service form in order to indicate that I am really suing the State of Connecticut Appellate Court as a state agency, not as a judicial body. Although Mr. Schaefer filed an appearance in the case, Mr. Schaefer notably refused to waive service. Constable Sparmer therefore served upon Michelle Angers the amended complaint, which, in accordance with the requirements of 42 U.S.C. §1983, specified that the State of Connecticut Appellate Court, as the judicial body that it is, was being sued only in its official capacity. This is the complaint that was served with the summons, not the original complaint that, because Mr. Schaefer never waived service, was technically not served upon the State of Connecticut Appellate Court. We know that Mr. Schaefer received the amended complaint because he references it in the last paragraph on Page Two of his reply memorandum, "Plaintiff's assertion is disingenuous, because he not only seeks punitive damages ...," a claim that only was made in the amended complaint. The fact that Mr. Schaefer knows that the complaint served upon the State of Connecticut Appellate Court was a complaint against the "State of Connecticut Appellate Court (Official Capacity)," not the "State of Connecticut Appellate Court," but misrepresents to the court the latter because it gets in the way of his argument

that I am suing the State of Connecticut Appellate Court as a state agency and not as a judicial body is a subterfuge that violates Rules 3.3(a)(1) and 3.3(a)(4) of the *Connecticut Rules of Professional Conduct*, which require that "a lawyer shall not knowingly: (1) Make a false statement of material fact or law to a tribunal; ... (4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures."

The Connecticut Supreme Court in *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 663 A.2d 317 (1995), determined that a lawyer's obligations to his adversary are these rules. Zealous advocacy in legal arguments, even if these arguments are not correct, is O.K. Misrepresentation of material facts, especially those proffered in a motion to dismiss which precludes the cross examination that could expose this dishonesty to judicial review, is not.

Sincerely,

Jared King

A-3. U.S. District Court Decision re: Motion to Dismiss

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JARED W. KING, *Plaintiff* — Civil Action No. 3-03-cv-1994 (JCH)

v.

AUGUST 17, 2004

STATE OF CONNECTICUT, *Defendant*

RULING RE: MOTION TO DISMISS [DKT. NO. 14]

I. INTRODUCTION

The plaintiff, Jared W. King ("King"), filed this action, pro se, on November 20, 2003, against the State of Connecticut Appellate Court ("State Appellate Court") [Dkt. No. 1]. King alleges that dismissal by the State Appellate Court of his appeal of a state court criminal conviction violated his rights secured by the United States Constitution. Amd. Compl. [Dkt. No. 4]. More specifically, King alleges that the State Appellate Court's dismissal of his appeal violated his due process and equal protection rights, constituted cruel and unusual punishment, and violated his right to "compulsory process" under the Sixth Amendment. He requests injunctive relief in the form of "re-instatement of CR94-97866, AC 18728 to the Appellate court docket," as well as several orders regarding the management of the case upon such re-instatement. Finally, he requests fees and costs and punitive damages "associated with 28 U.S.C. 1983."

Defendant State Appellate court filed a Motion to Dismiss all claims against it on February 9, 2004 [Dkt. No. 14] on the ground that the court lacks jurisdiction to hear the matter. For the reasons that follow, the court agrees with the defendant and grants the motion.

II. ALLEGED FACTS

King alleges the following facts in his amended complaint [Dkt. No. 4], which facts the court accepts as true solely for the purpose of this motion to dismiss.

The gravamen of the complaint is that, on September 13, 2000, the Connecticut Appellate Court erroneously dismissed King's appeal of a Connecticut State criminal case, Connecticut Appellate Court docket no. AC18728. The reason for the dismissal was the plaintiff's failure to provide the Appellate Court with a written acknowledgment of his transcript order as required by section 63-8(b) of the Connecticut Rules of Appellate Procedure.[1] Plaintiff,

[1] In pertinent part, section 63-8(b) provides: A party must make satisfactory arrangements for payment of the costs of the trascript... After those arrangements have been made, the official court reporter shall send the party who ordered the

however, was unable to comply with section 63-8(b) because he never received such an acknowledgment from the court reporter. Specifically, the court reporter refused to provide the acknowledgment until she was guaranteed payment. Moreover, she refused notwithstanding her receipt of a letter from the state public defender's office indicating that it would assume the costs of the transcript.

King moved to vacate the Appellate Court's dismissal of his appeal, which the court denied. King subsequently petitioned the Connecticut Supreme Court for certification of the appeal. On January 25, 2001, the Connecticut Supreme Court denied the petition. On or around June 27, 2003, King filed a motion with the Supreme Court [*sic*, actually with the Appellate Court, which has jurisdiction because *certiorari* was denied.]. On July 21, 2003, King filed a motion with the Connecticut Supreme Court for permission to reopen, [*sic*, also with the Connecticut Appellate Court] which the court denied on September 9, 2003. The instant action was commenced by complaint filed on November 20, 2003.

III. DISCUSSION

A. Standard of Review

The court notes that, in considering a motion to dismiss a complaint filed by a pro se plaintiff, the court "must construe pro se pleadings broadly, and interpret them 'to raise the strongest arguments they suggest.'" Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000) (quoting Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996)). "Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). Accordingly, a court is bound to accept as true all factual allegations in the light most favorable to the plaintiff.

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transcript a written acknowledgment of the order... The ordering party shall file it forthwith with the appellate clerk....

See, e.g., Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). This is so even if the plaintiff is unlikely ultimately to prevail. "Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test." Branham v. Meachum, 77 F.3d 626, 628 (2d Cir. 1996) (quoting Gant v. Wallingford Bd. of Educ., 69 F.3d 6691 673 (2d Cir. 1995) (internal quotation marks omitted)).

In considering such a motion the court must accept the factual allegations alleged in the complaint as true and all inferences must be drawn in the plaintiff's favor. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984). However, "bald assertions and conclusions of law will not suffice to state a claim ...." Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000) (citations omitted).

B. The Proper Parties to Instant Suit

As an initial matter, the court notes that, in his original complaint, King names only the State of Connecticut Appellate Court as the defendant. He subsequently amended, adding the parenthetical notation "Official capacity" after the defendant's name. The propriety of bringing suit against the Appellate court as opposed to the individuals who comprise the court is the subject of competing letter briefs filed by the parties following the initial briefing. King evidently believes that, by naming the court in its official capacity, he has properly brought suit against the individual of the State Appellate Court. See Mem. in Opposition, p. 19 ("I am alleging in the complaint that the Connecticut Appellate Court judges' actions or, perhaps more accurately, inaction, violated my constitutional rights." However, the court need not decide the question since the action is barred, in the first instance, by the Rooker-Feldman doctrine, see generally District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Trust Co., 262 U.S. 413 (1923), and, in the second instance, by the doctrine of judicial

immunity. See, e.g., Stump v. Sparkman, 435 U.S. 349, 355-56 (1978).

C. Claims Are Barred by the Rooker-Feldman Doctrine

King asserts various claims under the federal constitution all of which arise out of, and are inextricably intertwined with, a decision by the Connecticut Appellate Court. All such claims are barred by the Rooker-Feldman doctrine.

"The Rooker-Feldman doctrine provides that the lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would result in the reversal or modification of a state court judgment." Hachamovitch v. DeBuono, 159 F. 3d 687, 693 (2d Cir. 1998). "Rooker-Feldman applies not only to decisions of the highest state courts, but also to decisions of lower state courts." Ashton v. Cafero, 920 F.Supp. 35, 37 (D. Conn. 1996). The doctrine "holds that, among federal courts, only the Supreme Court has subject matter jurisdiction to review state court judgments." Johnson v. Smithsonian Inst., 189 F.3d 180, 185 (2d Cir. 1999) (citations omitted). Thus, the Rooker-Feldman doctrine plainly bars an action "if the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding." Moccio v. N.Y. State Office of Court Admin., 95 F.3d 195, 198-99 (2d Cir. 1996).

Further, the doctrine "bars federal courts from considering claims that are 'inextricably intertwined' with a prior state court determination." Johnson, 189 F.3d at 185 (citations omitted). In the Rooker-Feldman doctrine, "the Supreme Court's use of 'inextricably intertwined' means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (as either a plaintiff or defendant in that proceeding), subsequent litigation of the claim will be barred under the Rooker-Feldman doctrine if it

would be barred under the principles of preclusion." Moccio, 95 F.3d at 199-200 (citations omitted).[2]

Here, the plaintiff asks this court to order the Connecticut Appellate Court to reinstate an appeal which it had dismissed, an action which the Connecticut Supreme Court had refused to consider and which King never appealed to the United States Supreme Court. To do so would embroil this court in evaluating on the correctness of the actions taken by the Connecticut Appellate Court in King's individual state case and, in effect, to decide whether to reverse or vacate that decision as if sitting as a state court of appeal. This is precisely what the Rooker-Feldman doctrine forbids federal courts from doing. See Hachamovitch, 159 F.3d at 694; Gentner v. Shulman, 55 F.3d 87, 88-89 (2d Cir. 1995). Furthermore, plaintiff's requested declaratory relief, to the extent that he seeks for this court to review and declare invalid the lower state court's orders also asks this court to take precisely the sort of action that Rooker-Feldman is designed to prohibit. See Johnson, 189 F.3d at 185.

Assuming arguendo that the individual judges of the State Appellate Court were adequately named as defendants, the text of section 1983 limits the availability of prospective injunctive relief against those individuals insofar as they are state judicial officers. Montero, 171 F.3d at 761. "the 1996 amendments to § 1983 provide that 'in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.'" Id. (citation omitted.) King "however, alleges neither the violation of a declaratory decree, nor the unavailability of declaratory relief," and, as such his "claim for injunctive relief is ... barred under §

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[2] "However, a district court may lack subject matter jurisdiction under the Rooker-Feldman doctrine even when that court would not be precluded, under res judicata or collateral estoppel principles, by a prior state judgment." Doctor's Assocs., Inc. v. Distajo, 107 F. 3d 126, 138 (2d Cir. 1997).

1983." Id. Thus, the court concludes that the individual judges of the State Appellate Court may not be subjected to prospective injunctive relief because King's claims rely upon actions allegedly taken in these defendants' judicial capacities, and the plaintiff alleges neither the violation of a declaratory decree nor the unavailability of declaratory relief. See 42 U.S.C. § 1983.

Finally, to the extent King is seeking monetary damages against the individual judges of the State Appellate Court, the court holds that such claims are barred by the doctrine of judicial immunity. See, e.g., Stump, 435 U.S. at 355-56. Indeed, it is "well established that officials acting in a judicial capacity are entitled to absolute immunity against § 1983 actions, and this immunity acts as a complete shield to claims for money damages." Montero v. Travis, 171 F.3d 757, 760 (1999).

The court therefore has no subject matter jurisdiction over the plaintiff's claims for injunctive and declaratory relief or monetary damages. As such, these claims are dismissed.

IV. Conclusion

For the foregoing reasons, the court GRANTS the defendant's motion to dismiss [Dkt. No. 14].

SO ORDERED.

Dated at Bridgeport, Connecticut, this 17th day of August, 2004.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

A-4. Plaintiff's Motion for Reconsideration

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jared W. King, *Plaintiff*	) Civ. Action No.: 303CV199
v.	)
State of Connecticut	)
Appellate Court (Official	)
Capacity), *Defendant*	) Date: August 27, 2004
	)

MOTION FOR RECONSIDERATION OF DECISION GRANTING MOTION TO DISMISS

The plaintiff respectfully moves pursuant to Local Rule 7(c) for the court to reconsider its decision, dated August 17, 2004, but mailed August 20, 2004, granting the defendant's motion to dismiss, because it has seemingly overlooked:

1. the importance of the plaintiff, the state criminal defendant, both being and having been judicially determined to be indigent at the time of his request, having followed the proper procedure to request additional transcript from the court reporter;

2. that the parties in the two cases are different;

3. the lack of opportunity to litigate the claims in the state courts;

4. the claims are not the precise claims raised in the state court proceeding;

5. the Judiciary Act of 1988 requires certification of all cases to the U.S. Supreme Court;

6. the plaintiff did not have access to declaratory relief; and

7. the principle of judicial immunity is not absolute.

WHEREFORE, the plaintiff moves that the court reconsider its decision granting the defendant's motion to dismiss.

THE PLAINTIFF

_____

Jared King
156 S. River ST
Coxsackie, NY 12051-1409
(518) 731-7286
nwfg@earthlink.net

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed first class, postage prepaid to Daniel Schaefer, Assistant Attorney General, Office of the Attorney General, 55 Elm ST, P.O. Box 120, Hartford, CT 06141-0120 on August 30, 2004.

_____
Jared King, *Plaintiff*

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jared W. King, *Plaintiff*	) Civ. Action No.: 303CV199
v.	)
State of Connecticut	)
Appellate Court (Official	)
Capacity), *Defendant*	) Date: August 27, 2004
	)

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF DECISION GRANTING MOTION TO DISMISS

1. The court writes on Page Two of its decision, "Specifically, the court reporter refused to provide the acknowledgment until she was guaranteed payment. Moreover, she refused notwithstanding her receipt of a letter from the state public defender's office indicating that it would assume the costs of the transcript," and cites

Connecticut Rules of Court §63-8(b) in a footnote also on p. 2, "A party must make satisfactory arrangement for payment of the costs of the transcript...." The plaintiff had a number of phone conversations with Alice Masterson, the Official Court Reporter, at the time in which she repeatedly assured me that I had done everything correctly as an indigent defendant in my request, *i.e.* that I had made a satisfactory arrangement, but that she was unsure as to whether I had the legal authority to have the Office of the Public Defender pay for my transcript, regardless of the Office of the Public Defender's letter informing her of its willingness to pay for the transcript. She then went to the local trial judge, who, unbeknownst to her, lacked the legal authority to make such a determination, and in his case, did so without notice to me or without an opportunity to be heard, prohibiting the Office of the Public Defender's Office to pay for the transcript. It was then that I moved the court with jurisdiction, the Connecticut Appellate Court, to take control of the situation, which it notably did not. As written, your decision makes me think that the court may have overlooked that I had indeed made a satisfactory payment arrangement with Mrs. Masterson. Even if in spite of this fact, the court refuses to reconsider its decision granting the defendant's motion to dismiss, I would rewrite this sentence of the decision, "Specifically, the court reporter refused to provide the acknowledgment even though the plaintiff had made a satisfactory arrangement for payment of the transcript," or something to that effect, so that it does not mislead those reading it that I may not have made a satisfactory arrangement with Mrs. Masterson. Obviously, if Mrs. Masterson can remember this far back, she would corroborate my recounting of the facts described above.

2. The court writes on Page Five of its decision, "'the Supreme Court's use of 'inextricably intertwined' means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding (*as either the plaintiff or defendant in that proceeding*) [my emphasis added],

subsequent litigation of the claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion.' Moccio, 95 F.3d at 199-200 (citations omitted). As stated in my opposition memorandum, *Rooker* – the seminal case – states quite clearly, ""The District Court has no jurisdiction of a suit brought there by the party who was defeated in the state courts, against his *successful opponents* [my emphasis added]," (*Rooker* at 414). This case is a case of mandamus, to compel the Connecticut Appellate Court to perform its constitutional obligations, not an appeal of *State of Connecticut v. Jared W. King* against the State of Connecticut. Perhaps the court feels that the Moccio circuit court's expansion of the *Rooker-Feldman* doctrine from that articulated by the U.S. Supreme Court in *Rooker* to include dissimilar parties with different subject matter is proper. I would ask the court if that this was not the court's oversight, that it clearly state in its decision that it agrees with the Moccio circuit court and is expanding the *Rooker-Feldman* doctrine as articulated in *Rooker* (citation in my opposition memorandum).

3. The court writes on Page Five of its decision, "'the Supreme Court's use of 'inextricably intertwined' means, at a minimum, that where a federal plaintiff had an *opportunity to litigate a claim* [my emphasis added], in a state proceeding (as either the plaintiff or defendant in that proceeding) subsequent litigation of the claim will be barred under the Rooker-Feldman doctrine if it would be barred under the principles of preclusion.' Moccio, 95 F.3d at 199-200 (citations omitted). Please see my opposition memorandum; opportunity to litigate means to be heard on the merits. As my opposition memorandum makes clear, I was not provided the opportunity to litigate my claims. "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full hearing was had

therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions state in the bill actually arose in the cause, it was the province and *duty of the state courts to decide them* (my emphasis); and their decision, whether right or wrong was an exercise of jurisdiction," (*Rooker* at 415), or from *Feldman*, "[The proceedings before the District of Columbia Court of Appeals] involved a 'judicial inquiry' in which the court was called upon to investigate, declare and enforce 'liabilities as they [stood] on present or past facts and under laws supposed already to exist,'" (*Feldman* at 462). If this district court wants to expand the U.S. Supreme Court's articulation of the *Rooker-Feldman* doctrine, conceivably consistent with other, mistaken circuit courts, please state you are doing so in your decision. Otherwise, I believe the court has overlooked the facts as set forth in my memorandum and overlooked the narrow basis of the *Rooker-Feldman* doctrine to include only claims in which the party had the opportunity to litigate (*i.e.* have a full hearing on the merits of the claim, not to be denied permission to be heard).

4. The court writes on Page Five of its decision, "Thus, the *Rooker-Feldman* doctrine plainly bars an action 'if the *precise claims* raised in a state court proceeding are raised in the subsequent federal proceeding." *Moccio v. N.Y. State Office of Court Administration*, 95 F.3d 195, 198-99 (2d Cir. 1996). Although some of the claims are similar to those requested in the certification to the Connecticut Supreme Court and subsequently in the motion for permission to move to re-open the appeal to the Connecticut Appellate Court, some are not. The court has overlooked which claims were addressed to each body, (there are differences) and the claims first articulated in my complaint to this court. The court has damned all such claims with a broad brush, which according to even Moccio, it should not have done. I would look more closely at the relevant paperwork in the file again.

5. The Judiciary Act of 1988 requires certification of all cases to the U.S. Supreme Court. When the U.S. Supreme Court articulated *Rooker* (1923) and *Feldman* (1983) they did so with the knowledge that parties had access to the federal courts (namely the U.S. Supreme Court) to vindicate their federal legislation and constitutional claims of state court abuses in cases before the state courts. It seems to me that federal courts subsequent to the passage of the Judiciary Act of 1988 appear mindlessly to pay homage to the *Rooker-Feldman* doctrine without recognizing that one of its fundamental premises – access to federal court by right – is no longer valid. Today, the U.S. Supreme Court accepts only one in two hundred cases for certification. Many of the most important cases involving state court abuse of the last century such as *Powell v. Alabama* and *Georgia v. Reece* simply would not have been heard with U.S. Supreme Court certification and lower courts enforcing the *Rooker-Feldman* doctrine, particularly the expanded form of it that this court seems to have adopted along with some mistaken circuit courts. Although I only came across this information subsequent to my motion in opposition to Mr. Schaefer's motion to dismiss, I mentioned it in my memorandum in opposition to Mr. Schaefer's motion for leave to file a response to my letter of March 30, 2004. Perhaps the court overlooked this fact, since it was only mentioned in passing, but this is a very important realization, because using this court's interpretation of the *Rooker-Feldman* doctrine, there is *de facto* no federal oversight as to whether state courts' behavior is consistent or controverts rights of U.S. citizens as guaranteed by federal legislation and the U.S. Constitution's amendments.

6. The court writes on Page Six of its decision, citing *Montero*, 171 F.3d at 761, "The 1996 amendments to §1983 provide that 'in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a

declaratory decree was violated or declaratory relief was unavailable." Although I was unaware of any obligation to plead in this way, declaratory relief was unavailable to me, and apparently this district court believes my request for declaratory relief also should be unavailable to me in the federal courts.

7. Judicial immunity is not absolute. It can be limited by statute, and it only applies to the judicial activities of judges, not their ministerial responsibilities, such as those required by the U.S. Constitution. As I said in my opposition memorandum, I'm not overly concerned about monetary damages, and I cautioned the court in implementing damages, but the court's interpretation of judicial immunity is blanket protection for all actions of a judge is wrong. I cannot give the court citations at this time (a general legal encyclopedia will cover this point) and still meet my time of filing obligation, but I would appreciate the opportunity to provide citations, if the court desires them, at oral argument, if the court provides it.

THE PLAINTIFF

Jared King
156 S. River ST
Coxsackie, NY 12051-1409
(518) 731-7286
nwfg@earthlink.net

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed first class, postage prepaid to Daniel Schaefer, Assistant Attorney General, Office of the Attorney General, 55 Elm ST, P.O. Box 120, Hartford, CT 06141-0120 on August 30, 2004.

Jared King, *Plaintiff*

A-4. Plaintiff's Reply re: Reconsideration

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jared W. King, *Plaintiff*	) Civ. Action No.: 303CV199
v.	)
State of Connecticut	)
Appellate Court (Official	)
Capacity), *Defendant*	) Date: October 1, 2004
	)

PLAINTIFF'S REPLY TO DEFENDANT'S OBJECTION TO MOTION FOR RECONSIDERATION

I have had the opportunity to review the case law cited in the court's decision and Mr. Schaefer's *Memorandum in Opposition to Plaintiff's Motion for Reconsideration.*

The two principal fallacies in Mr. Schaefer's argument and the court's reasoning in its decision – are: 1) an interpretation of the *Rooker-Feldman* doctrine, a judicial interpretation of Article Three, Section Two of the U.S. Constitution and enabling legislation and judiciary acts, to preclude federal district courts from hearing *de novo* cases in which the cause of action derives from a state court action and 2) an interpretation of the phrase, "inextricably linked," as that phrase pertains to the *Rooker-Feldman* doctrine, to create a lower, more expansive standard than that of claim or issue preclusion, *i.e. res judicata* or collateral estoppel, to deny jurisdiction to federal district courts in more cases than the doctrine was intended by the Supreme Court that first articulated it.

The reasoning in *Rooker* was that Article Three, Section Two of the U.S. Constitution only provides the Supreme Court with appellate jurisdiction over "all Cases, in Law and Equity, arising under the Constitution, the Laws of the United

States ..." and that subsequent federal enabling legislation and judiciary acts, *e.g.* those that created the district and circuit courts, which granted the right of federal district courts to hear constitutional claims, 28 U.S.C. §1331, never specifically stated that district courts or circuit courts had appellate jurisdiction over cases originating in state courts. The interpretation by the *Rooker* Supreme Court was that, without positive law to the contrary, the district courts lacked this authority, *Johnson v. Smithsonian Institution*, 189 F.3d 180, 185 (2nd Cir. 1999).

An appeal is a petition to a higher court for adjudication of a case previously presented to a court of original jurisdiction. It necessarily involves the same parties.

A writ of mandamus is a claim to a court to compel parties, often government officials, to comply with their ministerial obligations. Federal district courts have the authority to hear such cases pursuant to 28 U.S.C. §1331.

The first fallacy of Mr. Schaefer's argument and the court's decision is that the *Rooker-Feldman* doctrine's prohibition against district courts hearing cases that have already been determined by state court judgment prohibits federal district courts from hearing different cases with different parties involving different causes of action that fall within a federal district court's jurisdiction absent application of the *Rooker-Feldman* doctrine. Even, *en arguendo*, if we accept the Court of Appeals, Second Circuit's interpretation in *Moccio v. New York State Office of Court Administration*, 95 F.3d 195 (2nd Cir. 1996), that the phrase, "inextricably intertwined," from the majority opinion in *District of Columbia Court of Appeals et al. v. Feldman et al.*, 460 U.S. 462 (1983), should be interpreted as the equivalent of matter and issue preclusion, a problematic interpretation since preclusion principles decidedly are not doctrines regarding subject matter jurisdiction as is the *Rooker-Feldman* doctrine, constitutional claims never heard in the state court would not

be governed by either claim or issue preclusion, *i.e. res judicata* and collateral estoppel.

The second fallacy of Mr. Schaefer's argument and the court's decision is a misinterpretation of the phrase "inextricably intertwined," to prohibit a federal district court hearing cases that might affect a state court judgment by enlarging the doctrine to include a lower, more expansive standard, other than the standard set forth in *Moccio*, *supra*, of one of claim and issue preclusion.

"The *Rooker-Feldman* doctrine also bars federal courts from considering claims that are 'inextricably intertwined' with a prior state court determination. *See Feldman*, 460 U.S. at 482 n. 16, 103 S.Ct. 1303," *Johnson v. Smithsonian Institution*, 189 F.3d 180, 185 (2nd Cir. 1999). The Supreme Court has provided little guidance as to what "inextricably intertwined" means. One such case was *Texaco v. Pennzoil*, 481 U.S. 1 at 25, 107 S.Ct. at 1533, where Justice Marshall defined the phrase in his concurring opinion, "The federal claim is 'inextricably intertwined' with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly *decided* [emphasis added, note the need to decide, not just decline to hear] the issues before it." Federal circuit courts, including the second circuit, adopted the standard for "inextricably intertwined" to be one identical to the standard for the preclusion principles of *res judicata* and collateral estoppel. "We agree that the Supreme Court's use of 'inextricably intertwined' means, at a minimum, that where a federal plaintiff had the opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding,) subsequent litigation of *the* [emphasis added, notice requirement of same claim for it to be considered an appeal] claim will be barred under the *Rooker-Feldman* doctrine if it would be barred under the principles of preclusion," *Moccio v. New York State Office of Court Administration*, 95 F.3d 195 (2nd Cir. 1996), also cited in *Johnson v. Smithsonian Institution*, *supra*, and *Gauthier v.*

Continental Diving Services, 831 F.2d 559, 561 (5th Cir. 1987) (declining to apply the *Rooker-Feldman* doctrine any more broadly than state preclusion principles), *Robinson v. Ariyoshi*, 753 F.2d 1468, 1472 (9th Cir. 1985) (viewing the *Rooker-Feldman* doctrine and preclusion principles as "two sides of the same coin"), *vacated on other grounds*, 477 U.S. 902, 106 S.Ct. 3269, 91 L.Ed.2d 560 (1986). The Second Circuit Court of Appeals set forth the two-pronged test for "inextricably intertwined" in *Moccio*, *supra*, and used it again in *Hachamovitch v. DeBuono*, 159 F.3d 687 (2nd Cir. 1998). The first is a test for claim preclusion or *res judicata*. The U.S. Supreme Court stated that the doctrine of *res judicata* means "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action, *Cromwell v. County of Sac*, 94 U.S. 351, 352," *Allen v. McCurry*, 449 U.S. 90, 94 (1980). The test here would be to decide if the facts of the claim had been heard or could have been heard with all relevant due process guarantees and the underlying action was decided by the state court on its merits. My appeal in *State v. Jared W. King* was not decided on its merits; *res judicata* does not apply. The second test is for issue preclusion or collateral estoppel. *Moccio* broke this test into two necessary conditions: "1) the issue in question was actually and necessarily decided in a prior proceeding, and 2) and the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding," *Moccio*, *supra*, at 200. These are necessary conditions, so if either condition did not exist in the case, the *Rooker-Feldman* doctrine would not apply. In the instant case, both conditions are not satisfied.

The first claim in my motion is really just a request to rewrite the factual portion of the decision to better reflect reality. Mr. Schaefer's claim that my recourse to challenge the action of the trial court in denying me "free" transcripts (actually a decision forbidding the public defender's office

from paying for transcripts as it agreed to do because of its failure to order them in the first place) was to file a motion for review, (p. 2, First Paragraph). A motion for review applies only to orders made by the trial court. Judge Grogins was not the trial court in the case, that was Judge Sequino, and his scrawling a note to the court reporter on a letter addressed to her from the public defender's office does not constitute an order. No motion was filed; no notice given; no hearing held and no jurisdiction existed (The case had been transferred to the Connecticut Appellate Court, which had jurisdiction pursuant to *Connecticut Rules of Court* §60-2.). Judge Grogins had as much authority to be issuing orders in the case as Jennifer Lopez.

In Mr. Schaefer's response to my second claim, he quotes from the decision in *Johnson v. De Grandy*, 512 U.S. 997, 1005-06, "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in the United States District court, based on the losing party's claim ...," (p. 2, Second Paragraph). I assume Mr. Schaefer did not read this case decision and is not intentionally misrepresenting the court's decision. This statement was the Supreme Court's summary of the State of Florida's argument, an argument the Supreme Court decidedly rejected. The Supreme Court wrote, "The State argues that the claims of the De Grandy plaintiffs should have been dismissed as *res judicata* because they had a full and fair opportunity to litigate vote dilution before the State Supreme Court, see [lengthy citation omitted]. The premise, however, is false, exaggerating the review afforded the De Grandy plaintiffs in the state court and ignoring that court's own opinion of its judgment's limited scope. Given the state constitutional mandate to review apportionment resolutions within 30 days, see [citation omitted] the Supreme Court of Florida accepted briefs and evidentiary submissions, but held no trial,", *Johnson v. De Grandy*, *supra*, 1004-05, (far more consideration than the plaintiff in the instant case by the

Connecticut Supreme or the Connecticut Appellate Court). This discussion goes on, includes the quotation cited by Mr. Schaefer, and describes the State's argument that although the United States as a party is not barred by *res judicata*, *Rooker-Feldman* should be a bar to it because its co-plaintiff, *De Grandy et. al.*, lost in state court and should be barred from seeking what in substance would be appellate review of the state court decision. The U.S. Supreme Court then rejected this argument.

The quotation from *Hartford Courant Co. v. Pellegrino*, 371 F.3d 49, 67-68 (2nd Cir. 2004) that Mr. Schaefer cites in his memorandum, (p. 2, Second Paragraph), that the *Rooker-Feldman* doctrine is not a bar to parties that were not parties to the state court action, the same position as that of the U.S. Supreme Court in *Johnson v. De Grandy* and other cases, does not support his argument that the *Rooker-Feldman* doctrine's application allows for the parties to be different. The conclusion of the Court of Appeals, Second Circuit was that the *Rooker-Feldman* doctrine did not apply in the case, (nor, interestingly, did the court find that the Eleventh Amendment or judicial immunity for either Judge Pellegrino, Chief Court Administrator, or Chief Justice Sullivan, Chief Justice of the Connecticut Supreme Court, the two defendants in the case, applied.). *Newman v. State of Indiana*, 129 F.3d 937, 942 (7th Cir. 1997) does make the argument that the *Rooker-Feldman* doctrine can be applied in cases where the parties are different; the U.S. Supreme Court, however has not made this argument (p. 3, First Paragraph). The conclusion in *Rooker* clearly requires the two parties to be the same, because it is based on the argument that losing parties in a state action should not be able to seek appellate review in a federal district court. The conclusion in *Feldman*, however, determining that federal district courts lack jurisdiction hearing cases that are "inextricably linked" to state court judgments, may very well have expanded the *Rooker-Feldman* doctrine to include more than just cases

which constitute appellate review of state court judgments. I write, "may," because the parties in *Feldman* were the same, and the U.S. Supreme Court may not have intended this subsequent inference by circuit courts in cases such as *Newman v. State of Indiana*, *supra*. The linkage of the phrase, "inextricably linked" to preclusion principles by circuit courts such as in *Moccio* would provide for the *dramatis personae* to be different in the instances of collateral estoppel, although not in instances of *res judicata*.

With respect to my third claim, preclusion principles – the principles used in determining whether the *Rooker-Feldman* doctrine should apply or not – do not apply to cases in which either the claims or issues before the state court have not been decided, let alone where state court refuses to allow the claims or issues to be considered (p. 4, First Paragraph). The U.S. Supreme Court defined "collateral estoppel" in *Allen v. McCurry*, *supra*, as meaning that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case, *Montana v. United States*, 440 U.S. 147, 153." The U.S. Supreme Court emphasized that "one limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted din not have a 'full and fair opportunity' to litigate that issue in the earlier case, *Montana v. United States*, *supra*; *Angel v. Bullington*, 330 U.S. 183." The Court of Appeals, Eighth Circuit decided that collateral estoppel applies only "where a party had 'an adequate opportunity or incentive to obtain a full and fair adjudication in the first proceeding,' *Simmons v. O'Brien*, 77 F.3d 1093, 1095 (8th Cir. 1996)," cited in *Rice v. Barnes*, 966 F.Supp. 877 (W.D.Mo. 1997). The Court of Appeals, Eighth Circuit went on to say, "Only when a party has previously had such a full and fair opportunity to litigate that issue does the benefit of preclusion outweigh the countervailing due process

concerns present whenever a party is estopped from raising a claim, *Id.* at 1095-96, (*citing Blonder-Tongue Lab, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-30 (1971))."

Mr. Schaefer's claim the remedy for Judge Grogins' obstruction of the Office of the Public Defender to pay for the transcript it did not order but admitted to me it should have and for which it would normally pay because court costs had been waived pursuant to *Connecticut Rules of Court* §64-1, regardless of whether I chose to continue to be represented by the Office of the Public Defender, was a motion for review, I believe, is incorrect, (p. 5 Second Paragraph). A motion for review applies only to orders made by the trial court. Judge Grogins was not the trial court in the case, that was Judge Sequino, and his scrawling a note to the court reporter on a letter addressed to her from the public defender's office does not constitute an order. No motion was filed; no notice given; no hearing held and no jurisdiction existed (The case had been transferred to the Connecticut Appellate Court, which had jurisdiction, pursuant to *Connecticut Rules of Court* §60-2.). Although I believe a motion for review not to be the proper remedy, as I wrote in my *Motion to Vacate*, October 26, 2000, I was willing to write one, if the Connecticut Appellate Court determined it to be the proper remedy for the situation. As I have written, the Connecticut Appellate Court made no such determination, instead preferring to remain cryptically silent.

Mr. Schaefer argues that *Rooker-Feldman* does not require that there be a full hearing on the disputed issue in state court, but only that the plaintiff had "an opportunity to present the claims in those proceedings," *Kropelnicki v. Siegel*, 290 F.3d 118, 128, (p. 6, Second Paragraph). I urge the court to read the case, especially pages 128 and 129. The Court of Appeals, Second Circuit upheld the *Moccio* standard, "a claim is 'inextricably intertwined' under *Rooker-Feldman* when 'at a minimum, … a federal plaintiff had an

opportunity to litigate a claim in a state proceeding (as either the plaintiff or defendant in that proceeding), ... [and] the claim ... would be barred under the principles of preclusion ....' However, 'where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not 'inextricably intertwined' and therefore not barred by *Rooker-Feldman*," *Id.* at 128. The court goes on to state, "[I]n order to demonstrate a lack opportunity to present her claims in state court, Kropelnicki must show 'some factor independent of the actions of the opposing party that precluded [her] from raising [her] federal claims,' *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 559 (7th Cir. 1999)," *Id.* at 129. In the instant case, this factor would be the lack of permission granted by either the Connecticut Supreme Court or Connecticut Appellate Court to hear the claims presented to each court, which in several instances differ and which in several instances differ from those presented to this court.

Mr. Schaefer is correct that the Court of Appeals, Second Circuit and other federal circuit courts have interpreted the phrase, "inextricably intertwined," from *Feldman* to expand the doctrine to be consistent with the requirements of preclusion principles, *e.g. Moccio, supra.* The *Moccio* standard, however, still requires as a necessary condition, "1) the issue in question was actually and necessarily decided in a prior proceeding," *Moccio, supra*, at 200. The issues raised in the Connecticut courts were not actually or necessarily decided, (p. 6, Second Paragraph).

Mr. Schaefer attempts to construe the U.S. Supreme Court's decision in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987), to conclude that only in instances where state procedural law barred presentation of his claims does the *Rooker-Feldman* doctrine not apply, (p. 7, First Paragraph). This conclusion is false; the discussion involves why Texaco's argument that *Younger* abstention, a doctrine that federal district courts should defer to ongoing state

proceedings "unless state procedural law barred presentation of its claims," *Id.* at 15. I urge the court to read the case in its entirety. The U.S. Supreme Court goes on to refer to Article Six of the United States Constitution, which "declares that 'the Judges in every State shall be bound by the Federal Constitution, laws and treaties." The court concludes its argument, "[W]e cannot say that those courts [the Texas state courts], when this suit was filed, would have been any less inclined than a federal court to address and decide the federal constitutional claims. Because Texaco apparently did not give the Texas courts an opportunity to adjudicate its claims, there is no basis for concluding that the Texas law and procedures were so deficient that *Younger* abstention is inappropriate," *Id.* at 17. Although given the court's current decision granting the defendant's motion to dismiss, I cannot say whether the Connecticut or federal courts are less inclined to decide my federal constitutional claims, but I certainly gave the Connecticut state courts the opportunity to decide them. They chose not to do so.

With respect to Mr. Schaefer's opposition to my fourth claim, a review of my claims made in my petition for certification to the Connecticut Supreme Court (contained in the heap of papers also known as Defendant's Exhibit A) and the complaint served upon the defendant in this case facially show that although some of the claims are similar, there are differences, (p. 7 Second Paragraph).

In reading Mr. Schaefer's continued argument on my fourth claim (p. 10, Second Paragraph), I am struck that if we accept his argument at face value, then if a party brings up the constitutional claims in the state court, he is arguing that *Rooker-Feldman* applies because of a district court's lack of appellate jurisdiction, and if a party brings constitutional claims *de novo* to the district court, the "inextricably intertwined" phrase used in *Feldman* applies if the party had the "full and fair opportunity" to litigate his claims. This is one reason I believe the Court of Appeals, Second Circuit's

interpretation of "inextricably intertwined" to be the equivalent of preclusion principles, in particular that of collateral estoppel, is problematic, since Congress passed 28 U.S.C. §1331 to allow United States citizens vindication of their constitutional rights in federal district court. Interestingly, if we apply the standard of review set forth by Mr. Schaefer as the *Rooker-Feldman* doctrine, it seems only in cases like the instant case where claims were raised but were not considered does *Rooker-Feldman* not apply, and even in the instant case, Mr. Schaefer argues that the *Rooker-Feldman* doctrine applies because he equates requests for certification or permission to re-open to be the equivalent of having claims or issues decided.

Regarding the fifth claim in my motion, it is true that that the second circuit has continued to apply the *Rooker-Feldman* doctrine as it has been applied, because, I suspect, no one has brought the change in the Judiciary Act of 1988 to the attention of the Court of Appeals, Second Circuit, (p. 13, Third Paragraph). In *Zucht v. King*, 260 U.S. 174, 176, the case involved a city ordinance being enforced by a municipality, where the parties had recourse to the state courts and where, as the court explained, it was a well-settled matter of constitutional law that a state had within its police power the authority to require compulsory vaccination of its citizens and that the state can delegate that authority to its municipalities. In the instant case, the claims arose through conduct of state judges. To paraphrase one of Jackie Mason's comedy routines, "if a person's a crook, you go to the police, if the police are crooks, you go to the judges, but if the judges are crooks, where do you go?" Although we know landmark cases like *Powell v. Alabama*, *Reece v. Georgia*, *Miranda v. Arizona*, *etc.* were heard by the U.S. Supreme Court,[1] we do not know how many of these kind of

[1] The U.S. Supreme Court would often consolidate cases to address their increasing caseload; *Miranda v. Arizona* was a decision affecting approximately thirty separate cases from around the country.

cases were not heard because the constitutional questions involved were not considered substantial; I hope not very many.

Mr. Schaefer goes on to state that "even prior to 1988, 'certiorari was the only means available to seek review in many situations....' 22 James Wm. Moore *et al., Moore's Federal Practice* §406App.102 at 406-11 (3d ed. 2004)," without continuing the quotation to show that the types of cases where certification was the only means of U.S. Supreme Court review do not include cases such as this case, (p. 14, First Paragraph). This case would be covered under 28 U.S.C. §1257, and mandatory appellate review was required under pre-1988 §1257 in cases of a federal constitutional challenge against a state statute or its application, 22 James Wm. Moore et al., *Moore's Federal Practice* §406App.103 at 406-11, 406-12 (3d ed. 2004). According to *Moore's Federal Practice*, the U.S. Supreme Court interpreted the phrase, "state statute," in §1257 broadly to include court orders, *Id.*, at 406-14. I am not sure how much we should infer from a footnote, but the quotation from the U.S. Supreme Court decision in *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 644 n.3 (2002) is very interesting because it affirms the *Rooker-Feldman* doctrine as being one of barring a district court from exercising appellate jurisdiction over state-court judgments, the doctrine as expressed in *Rooker*, as opposed to how the circuit courts, including the second circuit, have interpreted the *Feldman* court's use of the phrase, "inextricably intertwined" to mean the same thing as claim and issue preclusion. As I have written earlier, the *Rooker-Feldman* doctrine as interpreted by the circuit courts is problematic, as it contradicts the congressional intent of 28 U.S.C. §1331 and because the principles of preclusion do not involve a bar to district court jurisdiction, whereas the *Rooker-Feldman* doctrine does. Perhaps the U.S. Supreme

Court did not intend for the doctrine to have been expanded in the way it has been by the lower federal courts?

With respect to Mr. Schaefer's opposition to the sixth claim of my motion, *Montero v. Travis*, 171 F.3d 757, 761 (2nd Cir. 1999) does not require the pleading that declaratory relief was unavailable or a declaratory decree violated, but rather states that the Federal Courts Improvement Act of 1996 requires that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable," *Id.*, 761, (p. 14, Second Paragraph). In other words, the pleading is not important; the existence of declaratory relief or the violation of a declaratory decree is. Obviously, we can amend the complaint to reflect the reality of the situation in the case. *Rooker-Feldman* clearly does not apply to §1983, since it is not a claim that could be brought in state court.

With respect to Mr. Schaefer's argument in opposition of my final claim, I quote from *Mireles v. Waco*, 502 U.S. 9 (1991): "[O]ur cases make clear that the [judicial] immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i.e. actions not taken in the judge's judicial capacity, [citations omitted]. Second, a judge is not immune for actions, thought judicial in nature, taken in the complete absence of all jurisdiction, [citations omitted]." As I stated in my motion, contrary to the position of the court, judicial immunity is not absolute. In this case, determination of judicial immunity would depend on whether the court deemed that the state courts had a ministerial duty to be bound by the requirements of Article Six of the United States Constitution and Amendment Fourteen of the U.S. Constitution to hear the claims of constitutional defects in their proceedings.

It is obvious that this court feels very uncomfortable with the remedies requested by the plaintiff. I am amenable to

amending my pleadings in a way that would accommodate the court's wishes. I have corresponded with Mr. Schaefer by e-mail on attempting to resolve this case, but Mr. Schaefer said the Connecticut Appellate Court would not reopen my appeal voluntarily. We could amend the pleading to remove the requests for relief that modify the state courts' judgment dismissing my appeal or voiding my felony convictions. Perhaps the court could order the Connecticut Appellate Court to reopen its case and actually decide the constitutional claims of defects in its proceeding. We could also amend the §1983 claims to include the unavailability of declaratory relief in the state courts. We could change the basis of suit from 28 U.S.C. §1331 to 28 U.S.C. §2201, declaratory judgments, and the court could make findings of the unconstitutional acts of the Connecticut Appellate Court while not affecting the state court judgments. Although 28 U.S.C. §2201 creates a remedy, it is not a basis of federal jurisdiction, so the court will have to reverse its motion to dismiss first, since that decision is based on a lack of subject matter jurisdiction. A simple court hearing would allow for these discussions among the two parties and court to happen very easily and economically. Even if the court decides that I should be prevented from obtaining court consideration for the unconscionable constitutional violations of the Connecticut Appellate Court, let alone for those of the Superior Court (not a basis for this suit, but they exist in droves), I would appreciate the court issuing some sort of judgment recognizing these violations so that I can approach the Board of Pardons with a piece of paper instead of the two boxes of papers I have now.

THE PLAINTIFF

_____

Jared King
156 S. River ST
Coxsackie, NY 12051-1409
(518) 731-7286

nwfg@earthlink.net

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed first class, postage prepaid, to Daniel Schaefer, Assistant Attorney General, Office of the Attorney General, 55 Elm ST, P.O. Box 120, Hartford, CT 06141-0120 on October 8, 2004.

_____
Jared King, *Plaintiff*

A-5. U.S. District Court Decision re: Reconsideration

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JARED W. KING, *Plaintiff* — Civil Action No. 3-03-cv-1994 (JCH)

v.

FEBRUARY 8, 2005

STATE OF CONNECTICUT, *Defendant*

RULING RE: MOTION FOR RECONSIDERATION [DKT. NO. 34] and CORRECTED MOTION FOR RECONSIDERATION [DKT. NO. 35]

I. INTRODUCTION

The plaintiff, Jared W. King ("King"), filed this action, pro se, on November 20, 2003, against the State of Connecticut Appellate Court ("State Appellate Court") [Dkt. No. 1]. King alleges that dismissal by the State Appellate Court of his appeal of a state court criminal conviction violated his rights secured by the United States Constitution. Amd. Compl. [Dkt. No. 4]. More specifically, King alleges that the State Appellate Court's dismissal of his appeal

violated his due process and equal protection rights, constituted cruel and unusual punishment, and violated his right to "compulsory process" under the Sixth Amendment. He requests injunctive relief in the form of "re-instatement of CR94-97866, AC 18728 to the Appellate court docket," as well as several orders regarding the management of the case upon such re-instatement. Finally, he requests fees and costs and punitive damages "associated with 28 U.S.C. 1983."

Defendant State Appellate court filed a Motion to Dismiss all claims against it on February 9, 2004 [Dkt. No. 14] on the ground that the court lacks jurisdiction to hear the matter. The court granted that motion on August 17, 2004. Ruling Re: Motion to Dismiss [Dkt. No. 32]. Judgment was entered in favor of the defendants on August 23, 2004. [Dkt. No. 33]. The plaintiff filed the instant Motion for Reconsideration on August 27, 2004. [Dkt. No. 34].

II. ALLEGED FACTS

King alleges the following facts in his amended complaint [Dkt. No. 4], which facts the court accepts as true solely for the purpose of this motion to dismiss.

The gravamen of the complaint is that, on September 13, 2000, the Connecticut Appellate Court erroneously dismissed King's appeal of a Connecticut State criminal case, Connecticut Appellate Court docket no. AC18728. The reason for the dismissal was the plaintiff's failure to provide the Appellate Court with a written acknowledgment of his transcript order as required by section 63-8(b) of the Connecticut Rules of Appellate Procedure.[1] Plaintiff, however, was unable to comply with section 63-8(b) because he never received such an acknowledgment from the court reporter. Specifically, the court reporter refused to provide the acknowledgment until she was guaranteed payment.

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[1] In pertinent part, section 63-8(b) provides: A party must make satisfactory arrangements for payment of the costs of the transcript... After those arrangements have been made, the official court reporter shall send the party who ordered the transcript a written acknowledgment of the order... The ordering party shall file it forthwith with the appellate clerk....

Moreover, she refused notwithstanding her receipt of a letter from the state public defender's office indicating that it would assume the costs of the transcript.

King moved to vacate the Appellate Court's dismissal of his appeal, which the court denied. King subsequently petitioned the Connecticcut Supreme Court for certification of the appeal. On January 25, 2001, the Connecticut Supreme Court denied the petition. On or around June 27, 2003, King filed a motion with the Supreme Court [*sic*, actually with the Appellate Court, which has jurisdiction because *certiorari* was denied.]. On July 21, 2003, King filed a motion with the Connecticut Supreme Court for permission to reopen, [*sic*, also with the Connecticut Appellate Court] which the court denied on September 9, 2003. The instant action was commenced by complaint filed on November 20, 2003.

III. DISCUSSION

A. Standard of Review

The Second Circuit Court has held that '[t]he standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (citations omitted). There are three grounds that justify granting a motion for reconsideration: (1) an intervening change in controlling law; (2) the availability of newly discovered evidence; and (3) the need to correct clear error or prevent manifest injustice. Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992). That the court overlooked controlling law or material facts may also entitle a party to succeed on a motion to reconsider. Eisemann v. Greene, 204 F.3d 393, 395 n. 2 (2d Cir. 2000) (per curiam) ("To be entitled to reargument, a party must demonstrate that the Court overlooked controlling decisions

or factual matters that were put before it on the underlying motion.") (internal quotation marks omitted). In the instant case, King does not point to intervening changes in the law or any newly available evidence. Instead, he argues that the court overlooked various facts and points of law. Mot. for Reconsideration of Decision Granting Mot. To Dismiss [Dkt. No. 34].

B. Facts Alleged to Have Been Overlooked by the Court

King first argues that the court overlooked four facts put before it on the original Motion to Dismiss. The first of these –"the importance of the plaintiff, the state criminal defendant, both being and having been judicially determined to be indigent at the time of his [transcript] request", [Dkt. No. 34] – is irrelevant to the question of whether this court has jurisdiction over the plaintiff's claim. The other three facts alleged to have been overlooked are similarly irrelevant. In its August 17 Ruling, the court found that the plaintiff's claims were barred by the Rooker-Feldman doctrine, see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) and Rooker v. Fidelity Tust Co., 263 U.S. 413 (1923), because they arise out of, and are inextricable intertwined with, a decision by the Connecticut Appellate Court. That the parties before the Connecticut Appellate Court were the plaintiff, then a criminal defendant, and the State of Connecticut is irrelevant. Application of the Rooker-Feldman doctrine is not limited to instances where the parties before the lower federal court asked to review a state court decision are identical to those previously before that state court. See, e.g., Moccio v. N.Y. State Office of Court Admin., 95 F.3d 195 (2d Cir. 1996).

King also claims that the Rooker-Feldman doctrine does not apply because he did not have an opportunity to litigate his claims in the state court. He had available to him, however, the opportunity to appeal the Appellate Court's dismissal of his case. Having failed to obtain the right to

appeal to the Connecticut Supreme Court, he cannot now "appeal" the Appellate Court's ruling to this lower federal court. With regard to King's last allegation that this court overlooked the fact that "the claims are not the precise claims raised in a state court proceeding" [Dkt. No. 34], the court refers the plaintiff to its original ruling, in which it concluded that to reach the merits of plaintiff's claims would be to "embroil this court in evaluating" the correctness of actions taken by the Connecticut Appellate Court. Ruling Re: Motion to Dismiss [Dkt. No. 14] at 6.

C. Points of Law Alleged to Have Been Overlooked by the Court

While King's discussion of matters of federal jurisdiction is at times astute, he points to no changes in the law or issues of law overlooked by the court in its original ruling. "A motion for reconsideration should not serve as a vehicle for relitigating issues already decided." Metropolitan Entertainment Co., 25 F.Supp.2d at 368 (D.Conn. 1998) (citing Shrader, 70 F.3d at 257; Dodge v. Susquehanna Univ., 796 F.Supp. 829, 830 (M.D.Pa. 1992)). There is no doubt that the Rooker-Feldman doctrine has survived significant statutory limitations on the availability of Supreme Court review of state supreme court decisions. See Hartford Courant Co. v. Pellegrino, 380 F.3d 83 (2d. Cir.. 2004); Vargas v. City of N.Y., 377 F.3d 200 (2d Cir. 2004). In addition, contrary to King's assertions, there is no right to review of one's claims in a lower federal court. Furthermore, the contours of judicial immunity were not overlooked but, on the contrary, were considered and applied in that ruling. Ruling Re: Motion to Dismiss [Dkt. No. 24] at 6-7.

IV. Conclusion

For the foregoing reasons, the court GRANTS the plaintiff's Motion for Reconsideration [Dkt. No. 34], and Corrected Motion for Reconsideration [Dkt. No. 35], but upon consideration of the additional allegations raised by the

plaintiff, the court hereby abides by its original Ruling on the Motion to Dismiss dated August 19, 2004 [Dkt. No. 32].
SO ORDERED.

Dated at Bridgeport, Connecticut, this 8th day of February, 2005.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

A-6. U.S. Court of Appeals Appellant Brief

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Jared W. King, *Plaintiff-Appellant*	) Docket No.: 05-1296-cv
v.	)
State of Connecticut Appellate Court, (Official Capacity), *Defendant-Appellee*	) Date: July 10, 2005

APPELLANT'S BRIEF

I. Statement of Subject Matter and Appellate Jurisdiction:

The U.S. District Court, District of Connecticut, has subject matter jurisdiction of the case, a case involving claims of constitutional mandamus and 28 U.S.C. §1983 where the parties are located in different states, because of 28 U.S.C. §1331 and 28 U.S.C. §1332. The U.S. Court of Appeals, Second Circuit has subject matter jurisdiction over this appeal, an appeal of a court final ruling denying the appellant's *Motion for Reconsideration of Decision Granting Motion to Dismiss* or the plaintiff-appellant's corrected version of the motion, (Judge Hall described her denial as a granting of the motion but a refusal to vacate or modify her

judgment dismissing the case), in U.S. District Court, District of Connecticut, case 3:03-cv-1994JCH, because of 28 U.S.C. §1291 (28 U.S.C. §1292 if the court's ruling is perceived as interlocutory, since the court's decision in the case is not on the merits). Judge Hall filed this final ruling on 2/9/05; the plaintiff-appellant timely filed his notice of appeal on 3/7/05.

II. Statement of the Issues Presented for Review:

1. Did the U.S. District Court overlook the arguably material fact that the plaintiff-appellant, the Connecticut criminal defendant, was indigent and judicially determined to be indigent at the time of his request for additional transcript from the court reporter and his following of proper procedure to make such request?

2. Did the U.S. District Court overlook that the parties in the Connecticut criminal case, *State of Connecticut v. Jared W. King*, are different than those in the instant case, *Jared W. King v. State of Connecticut Appellate Court (Official Capacity)*?

3. Did the U.S. District Court overlook that the plaintiff-appellant was denied the opportunity to litigate his appellate claims in the state court proceeding?

4. Did the U.S. District Court overlook that the claims raised in the instant case, although similar, are different than those raised in the state court proceeding?

5. Did the U.S. District Court overlook or ignore an intervening change in controlling law, the Judiciary Act of 1988, which requires certification of all cases to the U.S. Supreme Court?

6. Did the U.S. District Court overlook that the plaintiff did not have access to declaratory relief?

7. Did the U.S. District Court overlook that the principle of judicial immunity is not absolute?

III. Statement of the Case:

On September 13, 2000 the Connecticut Appellate Court dismissed the criminal appeal of the plaintiff-appellant's for the plaintiff-appellant's failure to provide that court with a

written acknowledgment of his additional transcript order as required by §63-8(b) of the *Connecticut Rules of Appellate Procedure*. Plaintiff-appellant, however, was unable to comply with §63-8 because the court reporter refused to provide him with a copy of said acknowledgment. Because the plaintiff-appellant was indigent, as the trial court had previously determined, the court reporter refused to provide the acknowledgment until she was satisfied that she would receive payment for said additional transcript order, notwithstanding her receipt of a letter from the State of Connecticut Office of the Chief Public Defender stating that it would assume the cost of the transcript and notwithstanding that these transcripts would be moot if the State of Connecticut Chief State's Attorney's Office's would have stopped refusing to acknowledge the truth, as the plaintiff-appellant requested of it, that with the exception of the defense-requested continuances specified in the plaintiff-appellant's brief, the other continuances during the trial proceeding were at the request of the State of Connecticut.[1]

The plaintiff-appellant moved to vacate the Connecticut Appellate Court's dismissal of his appeal, which the Connecticut Appellate Court denied. The plaintiff-appellant petitioned the Connecticut Supreme Court for certification of the appeal. On January 25, 2001, the Connecticut Supreme Court denied the petition. On or around June 27, 2003, the plaintiff-appellant filed a motion with the Connecticut Appellate Court to re-open, which the court denied. On July 21, 2003, the plaintiff-appellant filed a motion with the Connecticut Appellate Court for permission to re-open, which the court denied on September 9, 2003.[2]

The plaintiff-appellant filed the instant case on November 20, 2003.[3] The defendant-appellee moved to dismiss, to which the plaintiff-appellant opposed, and the defendant-

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[1] See addendum, "D. Cause of Action," to complaint, in the brief's appendix.
[2] See addendum, "D. Cause of Action," to complaint, in the brief's appendix.
[3] See docket sheet items, "1," and "4," in the brief's appendix.

appellee replied.[4] On August 19, 2004, the U.S. District Court decided that the plaintiff-appellant's constitutional *mandamus* claims were barred by the *Rooker-Feldman* doctrine and his 28 U.S.C. §1983 claim was barred by the principle of judicial immunity, and therefore, the court dismissed the plaintiff-appellant's claims in their entirety.[5] Plaintiff-appellant filed a motion for reconsideration on September 01, 2004, to which the defendant-appellant filed a memorandum in opposition on September 23,2004 and to which the plaintiff-appellant replied on October 13, 2004.[6] On February 9, 2005, the U.S. District Court denied the plaintiff-appellant's *Motion for Reconsideration of Decision Granting Motion to Dismiss* or the appellant's corrected version of the motion, (Judge Hall described her denial as a granting of the motion but a refusal to vacate or modify her judgment dismissing the case).[7]

IV. Argument:

If it may please the court, and I suspect it will, I will attempt to be brief. My position with respect to these seven questions are set forth in the corrected version (corrected in form not in content) of my *Motion for Reconsideration of Decision Granting Motion to Dismiss* and its accompanying memorandum and my *Plaintiff's Reply to Defendant's Objection to Motion for Reconsideration*,[8] to which I would add the following comments about Judge Hall's *Ruling re: Motion for Reconsideration [Dkt. No. 34] and Corrected Motion for Reconsideration [Dkt. No. 35]*.[9]

Judge Hall is not correct that the facts that the plaintiff-appellant was both *de facto* and *de jure* indigent and that he followed proper criminal legal procedure are irrelevant with

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[4] See docket sheet items, "14," "15," "26," and "27," in the brief's appendix.
See docket sheet item, "32," in the brief's appendix.
[6] See docket sheet items, "34," "35," "40," and "45," in the brief's appendix.
[7] See docket sheet item, "48," in the brief's appendix.
[8] These filings are items "34," "35," and "45" on the docket sheet and are in the brief's appendix.
[9] This is docket sheet item, "48," and is in the brief's appendix.

respect to the subject matter bar caused by her misapplication of the *Rooker-Feldman* doctrine. Although difficult to ascertain because all cases have a unique set of facts (and this case has a "very unique" set of facts), Claims One and Three of my complaint are an attack on the unconstitutional general standard for indigent *pro se* criminal defendants in the Connecticut criminal courts to obtain additional transcript, and my numbered requests for relief, "2," "5," and "7" in the complaint are equitable and injunctive in nature. If the Office of the Chief Public Defender were representing me, the Office of the Chief Public Defender would have paid for the transcript just as it did when I was represented by that office. If I were a nonindigent *pro se* criminal defendant, I would have paid for the additional transcript. The problem in this case arose because the court reporter did not know what to do, and upon the plaintiff-appellant's request, the court with jurisdiction, the Connecticut Appellate Court, would not specify such a standard. I would call this court's attention to Section "[8]" from *Moccio v. New York State Office of Court Administration*, 95 F.3d 195 (2nd Cir. 1996) at 200, "We [the court] agree with Moccio that the *Rooker-Feldman* doctrine permits federal courts to entertain such general claims." She also completely misapprehends the significance of these facts with respect to the merit of the U.S. Constitutional Fourteenth, Eighth [*sic*] and Sixth Amendment *mandamus* claims and why the principle of judicial immunity does not apply to the plaintiff-appellant's 28 U.S.C. §1983 claim; judges are not immune from either suit or liability with respect to their failure to comply with their ministerial responsibilities.

Judge Hall also erroneously cites *Moccio* on p. 4 of her final ruling to support her claim, "Application of the *Rooker-Feldman* doctrine is not limited to instances where the parties before the lower court asked to review a state court decision are identical to those previously before that state court. See, *e.g., Moccio v. N.Y. State Office of Court Admin.*, 95 F.3d

195 (2d Cir. 1996)."[10] The parties in the state court proceeding and U.S. District Court were Moccio and the N.Y. State Office of Court Administration; the parties in the instant case were the State of Connnecticut and Jared W. King in the state proceeding and the judges of the State of Connecticut Appellate Court, sued in their official capacity. Although I believe that the Second Circuit's interpretation of the phrase "inextricably intertwined," first articulated by the U.S. Supreme Court in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), in *Moccio* to be coextensive with the principles of claim and issue preclusion, as many of its sister circuit courts have done, is problematic for a number of reasons, *e.g.* the principle of issue preclusion is not a bar to subject matter jurisdiction and is a restriction on a party's position in argument, not on a court, both of these principles do not apply in the instant case.

The Connecticut Appellate Court neither "actually and necessarily decided" the issues before it nor did I have "a full and fair opportunity to litigate" the issues in the state proceeding. I would agree with Judge Hall that, if the Connecticut Supreme Court had heard the case, then application of the *Rooker-Feldman* might be warranted. Judge Hall, however, erroneously applies the *Rooker-Feldman* doctrine when she asserts that I had a full and fair opportunity to litigate my claims when the Connecticut Supreme Court denied certification. [11] Being denied permission to be heard is not equivalent to being heard.

In her final ruling, Judge Hall does not deny the plaintiff-appellant's assertion that the claims in the proceedings are not the same claims as those made in the state court; several are, admittedly, similar and several are wholly different. She

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[10] Last two sentences of p. 4 of her ruling, "48" on the docket sheet; the ruling is in the brief's appendix.

[11] Second and third sentences of p. 5 of her ruling, "48" on the docket sheet; the ruling is in the brief's appendix.

asserts, however, that the hearing of these federal claims would "embroil this court in evaluating" the correctness of actions taken by the Connecticut Appellate Court.[12] This assertion is false. I took great pains when preparing my complaint to request relief that was constitutional and that respected jurisdictional boundaries. Injunctive relief of re-instatement to the docket and production of written court acknowledgement; reproduction and organization of the state case record at court expense, apparently moot because the case record was not destroyed, as claimed by Assistant Appellate Clerk Alan Gannuscio, since Assistant Attorney General Daniel Schaefer reproduced it for this court's review;[13] and modification of an unconstitutional court rule regarding brief-size limitation are the type of relief requested, none of which question the correctness of the Connecticut Appellate Court's actions, just the consistency of their actions (more accurately, "inactions") and policies (or lack thereof) with the U.S. Constitution. Indeed, even providing the Connecticut Appellate Court the option of either compelling the written court acknowledgment or voiding the Connecticut Superior Court felony convictions is an attempt to respect Connecticut Appellate Court discretion while insisting that that discretion be exercised consistent with U.S. Constitutional provisions. Moreover, I would call this court's attention to Section "[4]" from *Moccio v. New York State Office of Court Administration*, *supra* at 198, "If the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, *Rooker-Feldman* plainly will bar the action. On the other hand, we have held that where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not 'inextricably intertwined' and therefore not barred by

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[12] Fourth sentence of p. 5 of her ruling, "48" on the docket sheet; the ruling is in the brief's appendix.

[13] Exhibit "A" of docket sheet item, "15."

Rooker-Feldman. Texaco, 784 F.2d at 1144-45." Although I attempted to present similar claims to Claim One and Two to the Connecticut Supreme Court in my petition for certification and Claims One, Two and Three to the Connecticut Appellate Court in my July, 2003 motion requesting permission to re-open my case, I was never granted permission by either of these courts to present my claims, so I neither presented these three claims nor was provided an opportunity to present these claims, so that the *Rooker-Feldman* doctrine, as interpreted by the Second Circuit Court in *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133 (2nd Cir. 1986) and *Moccio*, *supra*, should not apply.

There has been a change in statutory law since *Feldman*, *supra*, that is highly relevant to the application of *Rooker-Feldman*; indeed, a change, I believe, undermines the principal premise of *Rooker-Feldman* as first articulated in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), mandatory U.S. Supreme Court review of U.S. Constitutional questions of state court decisions upon litigant demand. The Judiciary Act of 1988 now requires certification of all cases to the U.S. Supreme Court. Please see my discussion of the Judiciary Act of 1988 in my *Motion for Reconsideration of Decision Granting Motion to Dismiss* and its accompanying memorandum and my *Plaintiff's Reply to Defendant's Objection to Motion for Reconsideration.*[14] Although Judge Hall is correct that federal courts are still applying *Rooker-Feldman*, I submit those courts that still apply it may be ignorant of the Judiciary Act of 1988 and the principal premise of the doctrine when it was first articulated in *Rooker*.

In her final ruling, Judge Hall does not address her overlooking of the claims contained in Paragraphs Six and Seven from my *Motion for Reconsideration of Decision*

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[14] These filings are items "34," "35," and "45" on the docket sheet and are in the brief's appendix.

Granting Motion to Dismiss.[15] I refer the court to my discussion of these points from my motion and my reply.[16]

To these arguments, I would add a number of observations. The U.S. District Court Clerk's Office told me to read Judge Hall's decision regarding my motion for reconsideration carefully. If one does, one can see that Judge Hall is not saying that the State of Connecticut Appellate Court has not repeatedly violated my constitutional rights, that the conclusion in *Rooker* is not as I describe in my legal papers, that the interpretation of the phrase "inextricably linked" by the Second Circuit and other sister circuit courts to be the equivalent of *res judicata* and *collateral estoppel* is both an expansion of the doctrine and is problematic or that the continued application of the *Rooker-Feldman* doctrine in this expanded form since the passage of the Judiciary Act of 1988 is contrary to Congressional intent and – dare I say – ludicrous. Judge Hall is merely paying respect to the precedents of this circuit court until those precedents are modified. In a judicial world that too often sees higher court rulings as more useless than yesterday's newspaper, it is gratifying to see such respect by Judge Hall for this circuit court's previous decisions, although as stated previously, I believe Judge Hall has applied the *Rooker-Feldman* doctrine as interpreted by this circuit court and principle of judicial immunity incorrectly in the instant case.

Although it is often seen as salutary and good public policy to follow previous court doctrines, the principle of *stare decisis* is not a rigid adherence to the decisions of the past, particularly when those decisions are erroneous or when greater injustice would result from perpetuating policies derived from previous court decisions than in correcting them. I believe we have such a situation before the court,

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[15] These filings are items "48," "34," and "35" on the docket sheet and are in the brief's appendix.

[16] These filings are items "34," "35," and "45" on the docket sheet and are in the brief's appendix.

and I hope the court will take the opportunity to modify *Moccio* accordingly in light of the Judiciary Act of 1988 and that claim preclusion is not a subject matter bar and has nothing to do with preventing constitutional *mandamus* claims in U.S. District Court, jurisdiction granted to it by Congress in 28 U.S.C. §1331. Just as the U.S. Supreme Court ruled in a unanimous decision that the President of the United States must be subject to due process (*Jones v. Clinton*), *a fortiori*, since the enactment of the Fourteenth Amendment, even state judges must comply with the U.S. Constitution. *Mandamus* claims are limited collateral attacks; they are not appeals of state court decisions. As such, they are limited in scope and Judge Hall is correct to be concerned about not providing for relief invasive of state court jurisdiction; however, she is incorrect to see such possibly invasive remedies as being a bar to subject matter jurisdiction. If this court will reverse Judge Hall's order dismissing this case and return it back to her docket, I will work with Judge Hall and the Connecticut Appellate Court's legal representative to fashion appropriate remedies to the wrong it has done me.

It is also important to recognize that Judge Hall's decision gives more weight to the precedents of this circuit court, *e.g. Moccio*, *supra*, than to the precedents of the U.S. Supreme Court, *Rooker*, *supra*, to statutory law, *e.g.* 28 U.S.C. §1331, or to the U.S. Constitution, *e.g.* Fourteenth Amendment, that conflict with court decisions of this circuit. This reasoning is erroneous and disturbing. We all like to hear how wise we are; I am sure that judges of the Court of Appeals, Second Circuit are no different. Yet, judges have a responsibility to honor the Constitution first, federal statutes second, decisions of the U.S. Supreme Court third, decisions of this circuit court and other sister circuit courts fourth. I am trying to find a citation for a U.S. Supreme Court case which I have not yet found in which Associate Justice Stevens writing the majority opinion for the U.S. Supreme Court

makes the seemingly offhand comment that he is troubled by a trend he is observing in federal jurisprudence of following case law instead of statutory and Constitutional provisions and how such conduct is wrong. I share his concern.

My father was a physician. He once told me how medicine is "real" and law is not. Each person's organs are laid out slightly differently. Things don't always fit within the box. Law, however, is manmade. It is wholly artificial with a self-imposed box. You are not law school professors and your decision has real world effects. I applied for a pardon in the State of Connecticut and was denied even a hearing, although I did receive a kind letter from the executive director of the Board of Pardons, suggesting I reapply with more emphasis on contrition and what I am doing now and less on the surfeit of legal error in the Connecticut nonjury trial court proceedings. There is no guarantee of receiving such a pardon – as the executive director correctly wrote, "Clemency is an extraordinary act." – so I am seeking the opportunity to complete my state court proceedings. This pardon is important because until recently I have been unable to obtain employment as a convicted larcener and forgerer , and even in my current position, the president of the firm has been instructed by a contact of his at the National Association of Securities Dealers to avoid having me apply for a license as a convicted felon, since, in our post-Enron world, my application will probably be denied, and the firm will have civil and regulatory liability exposure from even the accusation of any wrongdoing on my part.

To the infinite credit of the U.S. Congress and federal judges who have created the federal statutes and court rules, the federal courts view themselves as places where justice is done, not where sometimes inane, always convenient legal theories are applied to the detriment of substantial justice, a criticism of many appellate courts by Jerry Spence in his book, *Justice for None*. Judicial wisdom has often been

scarce, especially in the Connecticut court proceedings. Because of this scarcity, justice is nonexistent. The Connecticut Appellate Court will not suffer by respecting my constitutional rights, but I continue to suffer because of their disrespect for them.

I beseech this court to choose the difficult right over the easy wrong and reverse Judge Hall's decision dismissing my case. Moreover, the court's provision of any additional guidance the court believes is appropriate for Judge Hall so that the parties can avoid further appeals to this court would also be appreciated.

Respectfully submitted,

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Jared King, *pro se*
Plaintiff-Appellant

A-7. U.S. Court of Appeals Reply Brief

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Jared W. King, *Plaintiff-Appellant*	) Docket No.: 05-1296-cv
v.	)
State of Connecticut Appellate Court, (Official Capacity), *Defendant-Appellee*	) Date: October 10, 2005

APPELLANT'S REPLY BRIEF

I. Reply to "Counter Statement [sic] of the Issues"

The appellant's brief presents seven issues for this court's review:

1. Did the U.S. District Court overlook the arguably material fact that the plaintiff-

appellant, the Connecticut criminal defendant, was indigent and judicially determined to be indigent at the time of his request for additional transcript from the court reporter and his following of proper procedure to make such request?

2. Did the U.S. District Court overlook that the parties in the Connecticut criminal case, *State of Connecticut v. Jared W. King*, are different than those in the instant case, *Jared W. King v. State of Connecticut Appellate Court (Official Capacity)*?

3. Did the U.S. District Court overlook that the plaintiff-appellant was denied the opportunity to litigate his appellate claims in the state court proceeding?

4. Did the U.S. District Court overlook that the claims raised in the instant case, although similar, are different than those raised in the state court proceeding?

5. Did the U.S. District Court overlook or ignore an intervening change in controlling law, the Judiciary Act of 1988, which requires certification of all cases to the U.S. Supreme Court?

6. Did the U.S. District Court overlook that the plaintiff did not have access to declaratory relief?

7. Did the U.S. District Court overlook that the principle of judicial immunity is not absolute?

My reply to her response to these issues, where she responded at all, is as follows:

1. Ms. Osborne only responds to this issue in passing, mentioning on Page Eleven of her brief, "[A]ppellant raises the same substantive constitutional concerns articulated in his

federal case, namely that the State of Connecticut's procedures somehow violate the rights of indigent criminal defendants," in her attempt to draw the unsubstantiated and *non sequitur* conclusion, "[U]nder ordinary principles of issue preclusion and claim preclusion, appellant's claims would be barred in the courts of the State of Connecticut." This court was correct in *Moccio* when it wrote, "We agree with Moccio that the *Rooker-Feldman* doctrine permits federal courts to entertain such general claims," *Moccio v. New York State Office of Court Administration*, 95 F.3d 195 (2nd Cir. 1996) at 200, as were Justice Marshall and Justice Scalia in their concurring opinions in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987), "The 'so-called Rooker-Feldman doctrine' does not deprive the Court of jurisdiction to decide Texaco's challenge to the Texas procedures," (Scalia, J.) at 21, as was Justice Ginsburg when she provided a synopsis of the U.S. Supreme Court's positions over the years in her unanimous opinion in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, L.Ed.2d 454, 125 S.Ct. 1517 (2005) to illustrate examples where the *Rooker-Feldman* doctrine does not apply. The principle of collateral or equitable estoppel would apply to Ms. Osborne's argument; namely that if she is to argue that claim or issue preclusion applies with respect to this claim as she does on Page Eleven of her brief, then she should be estopped from arguing that the *Rooker-Feldman* doctrine applies to these claims. This would be true even before *Exxon Mobil, supra*, since the U.S. Supreme Court did rule on this subject in *Pennzoil, supra*.

2. Ms. Osborne, and this court in *Hoblock v. The Albany County Board of Elections*, 2005 U.S.App. LEXIS 19071 (2d Cir. 2005), still attempt to apply – I believe erroneously – the *Rooker-Feldman* doctrine to cases involving different defendants, when neither *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), nor *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103

S.Ct. 1303, 75 L.Ed. 2d 206 (1983) involved multiple defendants and applying the doctrine in cases with multiple defendants is an expansion of the very reasonable doctrine articulated in *Rooker, supra*, and the reigned-in *Rooker-Feldman* doctrine articulated by the unanimous U.S. Supreme Court in *Exxon-Mobil, supra*, which is the doctrine as originally articulated in *Rooker*, which asserts that a federal district court cannot review matters actually decided by a state court. The doctrine, as set forth in *Rooker v. Fidelity Trust Co.*, 263 U.S. 403 (1923), states that "where a judgment has been rendered, after due hearing, by a state trial court, with jurisdiction of the subject matter and parties, and affirmed by the state Supreme Court, the only resort under the legislation of Congress, for correction of errors in deciding questions involving the Constitution, is to the appellate jurisdiction of this court," which in accordance with Article III, §2, is the U.S. Supreme Court. The court in *Rooker, supra*, concluded, "The District Court has no jurisdiction of a suit brought there by the party who was defeated in the state courts, against his *successful opponents* (my emphasis added)," (*Rooker* at 414). The *Rooker-Feldman* doctrine is a prohibition of federal courts lower than the U.S. Supreme Court to provide appellate review by hearing cases actually heard and adjudged, *i.e.* a judgment must be rendered, in state courts. "*Rooker* and *Feldman* thus established the clear principle that federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments," *Hoblock, supra.* It necessarily requires that the parties be the same, or at least not have a relationship of "privity" with one another.

3. Ms. Osborne proffers the same erroneous and hackneyed argument that her predecessors did regarding that constitutional claims made in a petition for certification, *i.e.* a request to the Connecticut Supreme Court to be heard, a request which in the instant case was denied, constituted an opportunity for the appellant to litigate these claims, let alone

the claims of his state appeal that would be the standard of review for a proper application of the *Rooker-Feldman* doctrine. In *Exxon-Mobil*, *supra*, the U.S. Supreme Court unanimously held, "Variously interpreted in the lower courts, the doctrine has sometimes been construed far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with the jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. §1738. See, *e.g. Moccio v. New Your State Office of Court Administration*, 95 F.3d 195, 199-200 (C.A.2 1996)," *Exxon-Mobil, supra*, at 1521. In this post-*Exxon-Mobil* world, the *Feldman* contribution to the *Rooker-Feldman* doctrine regarding cases being "inextricably linked," and the equating by this court in *Moccio*, *supra*, of this phrase to be identical to claims preclusion, are history. As the record indicates, neither the claims asserted in my petition for certification to the Connecticut Supreme Court, where many, but not all, of the claims in my federal district court case first appeared were either heard or adjudged nor the claims in my criminal appeal whose hearing and adjudication would constitute a state-court judgment were either heard or adjudged. The *Rookman-Feldman* doctrine, as quoted from *Rooker*, *supra*, in the previous section, does not apply to this set of facts.

Justice Ginsburg writes, "*Rooker-Feldman* does not otherwise override or supplant preclusion doctrine or augment the circumscribe doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions, *Exxon-Mobil*, *supra*, at 1522. "If a federal plaintiff 'present[s] some independent claim albeit one that denies a legal conclusion that a state court has reached in a case in which he was a party …, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion," *GASH Assocs vs. Village of Rosemont*, 995 F.2d 726, (C.A.7 1993); accord *Noel v. Hall*,

F.3d 1148, 1163-1164 (C.A.9 2003). This case was brought as a case of constitutional mandamus pursuant to 28 U.S.C. §1331, 28 U.S.C. §1332 and a civil rights action pursuant to 28 U.S.C. §1983 against the judges of the Connecticut Appellate Court to compel them in their court rules and procedures to comply with various sections to the U.S. Constitution as amended as required of them by the Fourteenth Amendment. They are independent claims that, in fact, cannot controvert conclusions of the state court because the state court was never presented, heard or adjudged these claims. We should look at state preclusion principles. Because the case was never adjudicated – and a judgment never rendered by the Connecticut Appellate Court[1] -- the principle of *res judicata,* or claim preclusion, does not apply. The more relevant consideration, however, is that of issue preclusion. On Page Eleven of Ms. Osborne asserts without proof, "Accordingly, under ordinary principles of issue preclusion and claim preclusion, appellant's claims would be barred in the State of Connecticut," nor does she explain what the State of Connecticut standards are for issue or claim preclusion. The most recent State of Connecticut case that I found that defines this standard (I do not have access to LEXIS) is *Dowling v. Finlay Associates, Inc.*, 248 Conn. 364 (1999). Earlier opinions and those cited in the case are consistent as to this standard. Justice Katz writes for the majority (if not the unanimous court):

> 'Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related

[1] A judgment is a final determination of the matters set forth in the pleadings; please see the discussion in *Corpus Juris Secundum* or other legal encyclopedia. This determination did not occur nor was there a determination of any of the claims in the case brought to the Federal District Court, several of which, but not all, were first presented in my petition for certification to the Connnecticut Supreme Court, not to the Connecticut Appellate Court which dismissed my criminal appeal which would be the relevant "state-court judgment."

ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits.... [I]ssue preclusion prevents a party from relitigating an issue that has been determined in a prior suit. *Virgo v. Lyons*, 209 Conn. 497, 501, 551 A.2d 1243 (1988), quoting *Gionfriddo v. Gartenhaus Café*, 15 Conn. App. 392, 401-402, 546 A.2d 284 (1988), aff'd, 211 Conn. 67, 557 A.2d 540 (1989). (Internal quotation marks omitted.) *Crochiere v. Board of Education*, 227 Conn. 333, 343, 630 A.2d 1027 (1993),' *Dowling*, *supra*, at 373.

She continues after a paragraph and a half:

.... In contrast, collateral estoppel precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them upon a different claim. *DeLaurentis v. New Haven*, 220 Conn. 2255, 239, 597 A.2d 807 (1991)," *Weiss v. Statewide Grievance Committee*, 227 Conn. 802, 818, 633 A.2d 282 (1993).

An issue is '*actually litigated*' if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined.... 1 Restatement (Second), Judgments §27, comment (d) (1982). An issue is *necessarily determined* if, in the absence of a determination of the issue, the judgment could not have been validly rendered. F. James & G. Hazard, Civil Procedure (3d Ed, 1985) §11.19. If an issue has been determined, but the judgment is not dependent upon the determination of the issue, the parties may relitigate, the parties may relitigate the issue in a subsequent action.... 1 Restatement (Second), [supra, comment (h)]. (Emphasis in

original.) *Jackson v. R. G. Whipple, Inc., supra*, 225 Conn. 714-15.

> To assert successfully the doctrine of issue preclusion, therefore, a party must establish that the issue sought to be foreclosed actually was litigated and determined in the prior action between the parties or their privies, and that the determination was essential to the decision in the prior case," *Delahunty v. Massachusetts Mutual Life Ins. Co., supra*, 236 Conn. 600-01.

I also note that under common law, collateral estoppel also generally requires a showing by the party requesting estoppel that the issues to be foreclosed are indeed identical to those previously decided in the first action, see any legal encylopedia or *Comair Rotron, Inc. v. Nippon Densan Corp.*, 49 F.3d 1535 (3rd Cir. 1995).

In the instant matter before this court, the claims in the federal district court case were neither "actually litigated" nor "necessarily determined" by either the Connecticut Appellate Court or the Connecticut Supreme Court. Ms. Osborne must establish both necessary conditions in her brief; she establishes neither. Moreover, collateral estoppel is a doctrine whose application by a court is supposed to be based on equity. This court is not required to preclude my federal district court claims, even assuming a finding that all claims were "actually litigated" and "necessarily determined." I believe that, based on the specific facts of the case, equity argues against such a finding. Moreover, past federal district courts recognize that conflicting federal interests supercede state preclusion doctrines, *American Mannex Corp. v. Rozands*, et. al., 462 F.2d 688 (5th Cir., 1972). Excellent examples of such scenarios would include mandamus, habeas, bankruptcy and federal tax proceedings.

4. Ms. Osborne writes on Page 9 of her brief:

> Appellant also claims that the Rooker-Feldman doctrine does not apply because he advances new claims in his federal case and he did not have an opportunity to litigate his claims in the state court. Appellant's assertions are unavailing for several reasons. First, appellant had an opportunity to litigate his claims in the state court and in fact appealed the dismissal of his criminal appeal to the highest court in Connecticut, which declined to hear his petition. Notably his petition to the Connecticut Supreme Court contains the same substantive allegations contained in this federal action. (See 66-91).

Her first statement is false. To be litigated, claims must be plead, heard and adjudicated. A petition for certification is a party's request for the court's permission to allow the party to have his claims plead, heard and adjudicated. The Connecticut Supreme Court refused this permission. Petitions for certification are not actions or proceedings; no filing fees were paid; no briefs written; no hearings held; no adjucation obtained. Please also see the description, *supra*, of the State of Connecticut Supreme Court's definition of "actually litigated." Also, see David Siegel's discussion in the notes of 28 U.S.C. 1257 in West's *Federal Reporter* of the lack of precedential value in a denial of certification, since it is not a judgment. Her second statement is disingenuous. My petition for certification propounded that the Connecticut Appellate Court's decision violated Article Eight of the Connecticut Constitution, the Cruel and Unusual Punishment Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment. My federal district court complaint proffers four claims. The first claim is made pursuant to the Due Process Clause and Equal Protection clauses of the Fourteenth Amendment. This claim expands on what was included in my petition for certification. The second claim is made pursuant to the

Eighth Amendment [*sic*] (This should be the Fifth Amendment). This claim was included in my petition. The third claim is made pursuant to the Sixth Amendment. This claim was not made in my petition. The fourth claim is made pursuant to 28 U.S.C. §1983. This claim was not made in my petition. Although one-and-one-half of the claims were made in the petition, two-and-one-half were not.

5. This court finally has a U.S. Supreme Court decision – indeed a unanimous decision – regarding the scope of *Rooker-Feldman* subsequent to the Judiciary Act of 1988 and its concomitant changes to 28 U.S.C. §1257. However, this question was not addressed in the court's decision in *Exxon-Mobil*, *supra*, and I suspect from reading the facts of the case, not even argued. Ms. Osborne did not respond to this claim.

6. Ms. Osborne also did not controvert my claim that declaratory relief was unavailable to me, a condition associated with the application of 28 U.S.C. §1983 to judicial officers.

7. *Montero v. Travis*, 171 F.3d 757, 761 (2nd Cir. 1999) does not provide for the absolute immunity of judges. Indeed, judges are not entitled to absolute judicial immunity for their failure to perform their ministerial acts, which is what is being alleged in the constitutional mandamus claims of my complaint. Ms. Osborne parrots Judge Hall's decision, but fails to respond to these points as previously explained in my motion for reconsideration and reply and included by reference in my brief.

II. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*

Justice Ginsburg, writing for a unanimous U.S. Supreme Court, correctly stated that with the exception of *Rooker*, *supra*, or *Feldman*, *supra*, the U.S. Supreme Court has never applied *Rooker-Feldman* doctrine to dismiss an action for want of subject-matter jurisdiction; such application has been one of the court of appeals of the various circuits. As Justice Ginsburg wrote, "[T]he lower courts have variously interpreted the *Rooker-Feldman* doctine to extend far beyond

the conte[illegible]of Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law under 28 U.S.C. §1738. See, *e.g. Moccio v. New York State Office of Court Administration*," *Exxon Mobil*, *supra*, at 1519. As I stated in my appellate brief (p. 4), I believed this court's *Moccio* standard to have been problematic. Justice Ginsburg writes, "The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," *Exxon Mobil*, at 1522. The U.S. Supreme Court recognizes that there are federal proceedings, which, by their very nature, may involve matters previously litigated. Justice Ginsburg uses the example from *GASH Assocs*, *supra*, "If a federal plaintiff 'present[s] some independent claim albeit one that denies a legal conclusion that a state court has reached in a case which he was a party ..., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion," *GASH Assocs*, *supra.*

This court lays out its new standard of review in *Hoblock*, *supra*. The court articulates four, necessary conditions (*i.e.* all conditions must be satisfied for *Rooker-Feldman* to apply) for the application of the *Rooker-Feldman* doctrine: 1) the federal plaintiff must complain of injury from a state-court judgment; 2) the federal plaintiff must seek federal court review and rejection of the state-court judgment; 3) the federal suit must follow state judgment; and 4) the parties in the state and federal suits must be the same.

In the instant case, the plaintiff filed a constitutional mandamus complaint along with a 28 U.S.C. §1983 against the judges of the Connecticut Appellate Court in their official capacity. The injury complained of was the court's failure to

order the Official Court Reporter to provide a required written acknowledgement after the Connecticut Public Defender's Office said they would pay for this transcript or taking other remedial action (*e.g.* directing Judge Grogins to stay out of proceedings in which he has no jurisdiction) – injury precedent to the dismissal of my case – instead of not taking such actions and dismissing the case. Because of my indigence at the time, this case does involve procedural questions and general constitutional challenges, along with the specific cause of action that all cases must include.[2] The Connecticut Appellate Court did not render a judgment on the claims in the federal district court because they were not brought before it. The Connecticut Supreme Court did not render a judgment on either the claims included in the appellant's petition for certification to that court, because the Connecticut Supreme Court denied certification and a denial of certification does not constitute a judgment, or on the claims that were not brought before it. Indeed, upon reflection, I think the court will see that it is less relevant in the application of the *Rooker-Feldman* doctrine whether a state-court judgment is a source of injury to a federal complainant but merely, as stated in Justice Marshall's concurring opinion in *Pennzoil v. Texaco*, 481 U.S. 1, at 25-26, whether the federal plaintiff is seeking review of the

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[2] *Feldman, supra*, in my opinion, was erroneously decided by the majority for a number of reasons both in terms of law and the specific set of facts in question. Justice Stevens' dissent would be the opinion I would have written if I were as articulate and intelligent as he is. Please review it, because that is my position and what appears to be the position of the unanimous U.S. Supreme Court in Exxon Mobil, *supra*. All claimants must allege specific injury or they would lack a cause of action and standing to sue. In other words, all cases before the court will involve a challenge by a particular "harmed" party and may or may not include a general constitutional challenge. With respect to Ms. Osborne's assertions on this subject on p. 7 of her brief, the instant cases involves general constitutional challenges along with specific harm, the specific harm, though, being caused by judicial actions, not by the adjudication of either the criminal appellate claims that were before the Connecticut Appellate Court or the constitutional challenges brought in the federal district court that were neither brought before or decided by the Connecticut Appellate Court.

merits of its state claims. Obviously, in the instant case, I have not asked the federal courts to evaluate whether I am a larcerner or forgerer, whether I was denied a speedy trial or whether the trial court judges were biased.

The appellant's complaint does request review of the Connecticut Appellate Court's dismissal as part of its mandamus review, however, as stated previously, that dismissal cannot be described as a judgment because it was not a determination of the matters before the Connecticut Appellate Court and the federal district court claims were never brought before the court. Mandamus claims, habeas claims and even certain claims in federal bankruptcy court, especially with the new bankruptcy law which supersedes state homestead exemptions, all constitute collateral federal proceedings which may allege some sort of injury associated with state judgments while not calling for appellate review of those judgments, which is the prohibition of *Rooker-Feldman*. Although as a part of the federal district court's inquiry as to whether the Connecticut Appellate Court's procedure for indigent defendants not represented by the State Public Defender's Office in obtaining the necessary written acknowledgment for transcript orders and its specific application in my case before that court Judge Hall may be in a position where she will either have to vacate or modify the Connecticut Appellate Court's dismissal, Judge Hall does not have the jurisdictional authority to dictate to the Connecticut Appellate Court what procedure or application of that procedure the court will adopt, only that whatever procedure it does eventually adopt and how it applies that procedure must be consistent with U.S. Constitutional principles. Furthermore, the court has the authority to oversee such implementation and not just provide declaratory relief, as Justice Kennedy wrote in the U.S. Supreme Court's opinion in *Frew v. Hawkins*, --U.S.--, 124 S.Ct. 899 (2004).

The third condition, that the federal case be brought after the state case is decided, is certainly met in the instant case.

With respect to the court's articulation of a new *Rooker-Feldman* standard as it has done in *Hoblock*, *supra*, the court should recognize that there are claims that could be brought initially in state court, be barred by statute of limitations, and subsequently be brought in federal court. Although this condition is certainly a necessary condition for the application of *Rooker-Feldman*, the real issue is whether the federal litigant had the opportunity to be heard in state court.

The fourth condition, however, that the parties be the same, is not met. The case in federal court constituted mandamus and 28 U.S.C. §1983 claims against the judges of the Connecticut Appellate Court in their official capacity. They are not claims against the State of Connecticut, the adversarial party in my Connecticut criminal appeal. I believe that as this court works on developing a new standard of review for the application of the *Rooker-Feldman* doctrine that will meet with the approval of the U.S. Supreme Court, the Court of Appeals will find this condition to be the most important.

The court's examples in *Hoblock*, *supra*, warrant discussion. The court uses the example of a federal plaintiff who sues his employer in state court for violating both state anti-discrimination law and Title VII. The analogous situation regarding the instant case is that a federal plaintiff, who is sued by the State of Connecticut for violating state antidiscrimination law and Title VII, loses and brings a timely appeal. Because of having or applying court procedures inconsistent with the U.S. Constitutional rights of the federal plaintiff, the federal plaintiff cannot fulfill the appellate court's order and his case is dismissed. The federal plaintiff sues the judges in their official capacity in the case for not having or applying court procedures that are consistent with the U.S. Constitution and for violating 28 U.S.C. §1983. The case has different parties, federal claims that are distinct from the underlying state case, injury that is related to the court's dismissal but is really not the proximate

cause of the injury, and a claim for federal review limited to the plaintiff's constitutional claims and civil rights claims unrelated to the Title VII or antidiscrimination claims that are the basis of any state judgment. The analogous example with the court's child-custody example would be claims associated with the state employees' conduct that are independent of their compliance with the state-court judgment but which include injury related to how they enforced that state-court order.

This court should be careful, however. It seems the court in *Hoblock*, *supra*, at [24] seems more concerned with "clever pleading" by federal plaintiffs and not about recognizing constitutional mandamus, 28 U.S.C. §1983, or habeas corpus claims against individuals that, although may have their genesis with court proceedings, are not an appellate review of those state-court judgments, even though collateral review may very well affect those state-court judgments. For example, habeas claims are often plead as against the warden of the prison, even though it may very well have been a state-court judgment that sent the federal plaintiff there, and the warden is merely enforcing that judgment.

Lastly, Justice Ginsburg points out correctly in *Exxon-Mobil*, *supra*, "Preclusion, of course is not a jurisdictional matter," *Exxon-Mobil*, supra, at 1527. Preclusion claims are not grounds for a motion to dismiss but merely an affirmative defense to be decided by the factfinder at time of trial.

III. Where Do We Go From Here?

As Justice Benjamin Cardozo once wrote, "Justice is a concept by far more subtle and indefinite than is yielded by mere obedience to a rule." Perhaps we should spend some of our time in oral argument discussing such remedies in order to achieve a case outcome more consistent with justice than the erroneous application of the *Rooker-Feldman* doctrine or the doctrine of "absolute" judicial immunity as a subject-matter-jurisdiction bar for all of my claims.

Respectfully submitted,

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Jared King, *pro se*
Plaintiff-Appellant

A-8. U.S. Court of Appeals Decision re: Appeal

UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY OF THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 19th day of December, two thousand five.

PRESENT:
Hon. Joseph M. McLaughlin,
Hon. Robert D. Sack,
Circuit Judges,
Hon. John G. Koeltl,[1]
District Judge.

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[1] The Honorable John G. Koeltl, of the United States District Court for the Southern District Court for the Southern District of New York, sitting by designation.

JARED W. KING, Plaintiff-Appellant,

- v - No. 05-1296-cv

STATE OF CONNECTICUT, Defendant-Appellee

Appearing for Appellant: JARED W. KING, Coxsackie, NY, pro se.

Appearing for Appellee: ROBERT DEICHERT, Office of the Attorney General of Connecticut, (Maura Murphy Osborne, Assistant Attorney General, Richard Blumenthal, Attorney General, of counsel), Hartford, CT

Appeal from a judgment of the United States district Court for the District of Connecticut (Janet C. Hall, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment be, and it hereby is, AFFIRMED.

Jared King, pro se, appeals from the judgment of the United States District Court for the District of Connecticut (Janet C. Hall, Judge) dismissing his amended complaint, and from the court's later decision granting his motion for reconsideration but abiding by its original decision.

In his amended complaint, King asserted that the Connecticut Appellate Court's dismissal of his criminal appeal violated the Sixth, Eighth, and Fourteenth Amendments of the Constitution. King sought, among other things, injunctive relief ordering the state court to reopen the appeal. The district court dismissed King's claims for lack of jurisdiction under the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman 460 U.s. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The court also noted that if King's suit were construed as an action against the individual judges on the state court, the judges would be protected by judicial immunity from

damages claims. We agree with the district court on both of these issues for substantially the reasons stated in its opinion. See also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,125 S.Ct. 1517, 1521-22 (2005). Although the state did not raise the issue, and we may therefore ignore it, see Wisconsin Dept. of Corrections v. Schacht, 524 U.S. 381, 389 (1998), we note that King's claims against the state court "in its official capacity" would appear to be a suit against a state agency, which is barred by the Eleventh Amendment. See In re Charter Oak Assocs., 361 F.3d 760, 765 (2d Cir. 2004); cf. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989).

Because dismissal of the complaint was proper, the district court did not abuse its discretion in declining to disturb its initial decision on reconsideration.

For the foregoing reasons, the judgment of the District Court is hereby AFFIRMED.

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: Olivia M. George, Deputy Clerk

A-9. U.S. Court of Appeals Decision re: Rehearing

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Date:	4/28/06
Docket Number:	05-1296-cv
Short Title:	King v. State of CT
DC Docket Number:	03-cv-1994
DC:	DISTRICT COURT OF CONNECTICUT (NEW HAVEN)
DC Judge:	Honorable Janet Hall

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the day of two thousand six.

KING V. BURNS

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Jared W. King. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Roseann B. MacKechnie, Clerk
By: Tracy W. Young, Motion Staff Attorney